United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B P/S

74-1398

UNITED STATES OF AMERICA,

Appellee,

-against-

CARMINE TRAMUNTI,

Defendant-Appellant.

APPELLANT'S APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
APR 26 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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DOCKET ENTRIES

Filed: 3/7/74

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev. JUDGE BAUMAN

73 CRIM. 514

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: 264-6596
vs.	John R. Wing, AUSA
CARMINE TRAMUNTI	
	For Defendant:

(12) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk		3/7/74	Greenberg Main	1	
J.S. 3 mailed ✓	Marshal					
Violation	Docket fee					
Title 18						
Sec. 1623 Perjury						
SEVEN COUNTS						

DATE	PROCEEDINGS
5-31-73	Filed Indictment - B/W ordered. -- Cannella, J.
6-11-73	Deft. (Atty. present) pleads not guilty. Bail continued. Case assigned to Judge Bauman. -- Palmieri, J.
6-19-73	Filed notice of appearance kof Daniel H. Greenberg, 3 W. 57th St. N.Y.C. 686-8212
6-20-73	Filed the following papers received from the Magis. Docket sheet, Apperance bond($15,000.)
6-25-73	Pre-trial conf. held, motions ret. 7-11-73. Trial set for Sept. 10,1973. Bauman,J.
Jul.13, 73	Filed Defts. memo of law in support of motion Re: dismissing indictment.
Jul.13,73	Filed defts. notice of motion to dismiss indictment.
7-27-73	Filed Govt's memo in opposition to deft's motions to dismiss the indictment.

Cont'd on page 2

DATE	PROCEEDINGS
7-27-73	Filed MEMO END. on Motion to dismiss . Motion to dismiss count 7 of the indictment is granted. In all other respects the motion is denied. So Ordered. BAUMAN,J.
10-3-73	Filed affdvt. for W/H/C Ad Pros. Writ issued. Ret/ 10-4-73.
10-10-73	Filed affdvt. of Ted. S.Rakoff.
10-18-73	Defendant (atty present) Jury trial begun as to counts 1 thru 6. Count 7 dismissed on motions 7-27-73. Defendant produced on Writ.
10-19-73	Trial cont'd
10-23-73	Trial cont'd
10-24-73	Trial cont'd
10-25-73	Trial cont'd and concluded. Jury verdict-defendant found GUILTY on cts. 1 thru 6. P.S.I. ordered. Sentence adj'd to Dec. 6, 1973 at 9:30 a.m.. Writ adj'd to 12-6-73.
10-29-73	Govts. motion for remand- granted. BAUMAN,J.
11-21-73	CARMINE TRAMUNTI- Filed notice of motion to disclose whether the deft. testified before grand jury. Ret. 11-28-73.
11-28-73	CARMINE TRAMUNTI - Filed Govt. affdvt. in response to deft. motion to disclose.
11-28-73	CARMINE TRAMUNTI- Filed MEMO END. on deft motion filed 11-21-73. Consented to. So Ordered. BAUMAN,J.
11-30-73	CARMINE TRAMUNTI - Filed deft. motion for discovery.
11-30-73	Filed transcript of record of proceedings dated 10-24,25-73.
12-6-73	Filed transcript of record of proceedings dated 10-19-73.
12-5-73	Filed transcript of record of proceedings dated 10-15-73.
1-9-74	Filed deft. motion for new trial.
1-9-74	Filed defts. memo of law in support of Rule 33 motion.
1-30-74	Defts. motion pursuant to Rule 33 to set aside verdict. Motion argusred; Dec. Res. BAUMAN,J.
2-27-74	Deft. (Atty Present) Filed Jedgment and issued copies, Rule 33 motion denied, It Is Adjudged that the deft. is herebycommitted to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of cts. 1,2,3,4,5 & 6. Sentence imposed on each of cts. 1,2,3,4,5 & 6 are to run concurrently with each other. BAUMAN,J.
3-7-74	TRAMUNTI- Filed notice of appeal from judgment entered on 2-27-74. m/n

Cont'd on page 3

DATE	PROCEEDINGS
3-11-74	Filed amended judgment; judgment dtd: Feb. 27-74 amended to read: The deft. was produced on a Writ Ad Pros. BAUMAN, J. Copies issued.
3-14-74	Filed deft's memorandum re: matters presented to the Jury.
3-14-74	Filed deft's affidavit in opposition to matters brought up during the trial.
3-14-74	Filed Govt's memo. of law in opposition to deft's motion for a new trial.
3-14-74	Filed Govt's further memo. in opposition to deft's Rule 33 motion.
3-14-74	Filed deft's reply memo. in support of his Rule 35 motion.
**9-28-73	Filed transcript of record of proceedings dtd: July 23-73.
3-19-74	Filed transcript of record of proceedings dated 2/27/74

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

CARMINE TRAMUNTI,

Defendant.

The Grand Jury charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti,

Michael Hellerman, Murray Taylor, Philip Bonodonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whether the defendant CARMINE TRAMUNTI knew of, or had ever met or had ever talked with Michael Hellerman, and what was said in any such meeting or conversation and by whom.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under oath before said Court with respect to the aforesaid material matter as follows:

Q. Do you know the co-defendant Michael Hellerman?

A. No, sir.

Q. Have you ever met Mr. Hellerman?

A. No, sir, never met him.

* * *

Q. Now, is it your testimony that you don't know Michael Hellerman?

A. Yes, sir.

Q. You have never seen Michael Hellerman?

A. I have never seen Michael Hellerman.

Q. Have you ever talked to Michael Hellerman?

A. No, sir, never talked to him.

Q. Did you talk to him last Wednesday?

A. Where?

Q. Did you talk to him last Wednesday?

A. No, sir.

Q. Did you talk to him at any time ever?

A. No, sir, never spoke to Mike Hellerman.

Q. Prior to the indictment in this case did you know who Mike Hellerman was?

A. No, sir, I don't know him.

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI as he then and there well knew, was untrue in that the defendant CARMINE TRAMUNTI knew who Michael Hellerman was and had met and talked with Michael Hellerman on more than one occasion.

(Title 18, United States Code, Section 1623).

INDICTMENT

COUNT TWO

The Grand Jury further charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti, Michael Hellerman, Murray Taylor, Philip Bonodonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whet her the defendant CSRMINE TRAMUNTI knew, had ever met or had ever talked with John M. Kelsey, what was said in any such meeting or conversation and by whom.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under oath before said Court, with respect to the aforesaid material matter as follows:

Q. Do you know the co-conspirator John M. Kelsey?

A. No, sir.

Q. Did you ever meet Mr. Kelsey?

A. Never met him either.

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI, as he then and there well knew, was untrue, in that the defendant CARMINE TRAMUNTI knew John Kelsey and had met and talked with John Kelsey on more than one occasion.

(Title 18 United States Code, Section 1623).

INDICTMENT

COUNT THREE

The Grand Jury further charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti, Michael Hellerman, Murray Taylor, Philip Bonodonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whether the defendant CARMINE TRAMUNTI knew, had ever met, or had ever talked with Murray Taylor, what was said in any such meeting or conversation and by whom.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under oath before said Court, with respect to the aforesaid material matter as follows:

Q. Do you know the co-defendant Murray Taylor?

A. No, sir.

Q. Ever meet Mr. Taylor?

A. Never met him either.

* * *

Q. You testified, I believe that you don't know Murray Taylor, is that right?

A. The honest truth, I don't know Murray Taylor.

Q. You never met Murray Taylor?

A. I never met him, never.

Q. And you had never seen him before the indictment in this case?

A. That's right.

* * *

Q. Did you see Taylor in Gatsby's?

A. No, sir.

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI, as he then and there well knew, was untrue in that the defendant CARMINE TRAMUNTI knew Murray Taylor and had met Murray Taylor on at least one occasion in Gatsby's restaurant on East 41st Street in New York City.

(Title 18, United States Code, Section 1623).

COUNT FOUR

The Grand Jury further charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material

declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti, Michael Hellerman, Murray Taylor, Philip Bonodonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whether the defendant CARMINE TRAMUNTI knew, had ever met, or had ever talked with Vincent Gugliaro, what was said in any such meeting or conversation and by whom.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under oath before said Court, with respect to the aforesaid material matter as follows:

Q. Now, do you know the defendant Vincent Gugliaro?

A. No, sir.

Q. When for the first time do you recall having seen him?

A. Who, Gugliaro?

Q. Yes.

A. In this courtroom.

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI, as he then and there well knew, was untrue in that the defendant CARMINE TRAMUNTI knew and had met Vincent Gugliaro on at least one occasion in Gatsby's restaurant on East 41st Street in New York City.

(Title 18, United States Code, Section 1623).

COUNT FIVE

The Grand Jury further charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a

law of the United States authorized an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti, Michael Hellerman, Murray Taylor, Philip Bonodonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whether the defendant CARMINE TRAMUNTI knew, had ever met, or had ever talked with Philip Bonadonna, what was said in any such meeting or conversation and by whom.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under

oath before said Court with respect to the aforesaid material matter as follows:

Q. Do you know the defendant Philip Bonadonna?

A. No, sir.

* * *

Q. Is it your testimony that you never met Phil Bonadonna?

A. Yes, sir, never met him.

Q. You never saw that man?

A. Never met him, just in this courtroom.

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI, as he then and there well knew, was untrue in that the defendant CARMINE TRAMUNTI knew and had met Philip Bonadonna on at least one occasion in Gatsby's restaurant on East 41st Street in New York City.

(Title 18, United States Code, Section 1623).

COUNT SIX

The Grand Jury further charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath

that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorized an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti, Michael Hellerman, Murray Taylor, Philip Bonadonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whether the defendant CARMINE TRAMUNTI attended a meeting in late October or early November 1969 at Gatsby's restaurant on EAst 41st Street in New York City at which there was a discussion of a stock

manipulation scheme involving Imperial Investment Corporation stock.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his own behalf before said Court, testified falsely under oath before said Court with respect to the aforesaid material matter as follows:

Q. Do you know anything about Imperial Investment Corporation?

A. No, sir.

* * *

Q. Did Taylor explain the Imperial deal to you?

A. Me?

Q. Yes.

A. I don't know nothing about the deal. I don't even know him. How could he explain it to me?

* * *

Q. There is testimony in this case that some time around the end of October or the first two weeks in November 1969 that you attended a luncheon meeting at the new Gatsby's Restaurant on East 41st Street at which six other persons attended. Did you ever attend any such luncheon meeting with six other persons at that time, at that restaurant?

A. No, sir, and he's a liar.

* * *

Q. Apart from the time you and I went to Gatsby's and met John Dioguardi, have you ever been there in the fall of 1969 for a luncheon with anyone else?

A. No, sir.

* * *

Q. Mr. Taylor said that you attended a luncheon with himself -- just a minute. I have the names written out. I don't want to make a mistake -- with himself, John Dioguardi, Michael Hellerman, you, John Kelsey, Vincent Gugliaro and Philly Black some time in the first ten days of November, 1969, after Mr. Taylor's return from his second trip to Montreal, which was on the 3rd of November, 1969.

Did you attend such luncheon with Mr. Taylor?

A. No, sir.

Q. Mr. Kelsey has testified that he attended a luncheon with you, John Dioguardi, Vincent Aloi, Murray Taylor, a man that he said was Little Vinnie and another man whose name he did not know but he pointed to Mr. Bonodonna some time while Mr. Hellerman was on an out-of-town trip shortly after Mr. Taylor made his trip to Canada on the first Sunday or Monday of November 1969.

Did you atttend any such meeting that Mr. Kelsey mentioned?

A. I never attended no such meeting.

Q. Mr. Kelsey said at this luncheon you had very little to say, you merely answered one or two questions and nodded your head.

Did you do any such thing at any such luncheon?

A. No, sir. I never was at that meeting.

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI, as he then and there well knew, was untrue in that the defendant CARMINE TRAMUNTI attended a meeting in late October or early November 1969 at Gatsby's restaurant on East 41st Street in New York City at which there was a discussion of a stock manipulation scheme involving Imperial Investment Corporation stock.

(Title 18, United States Code, Section 1623).

COUNT SEVEN

The Grand Jury further charges:

1. On or about the 14th day of December, 1971, in the Southern District of New York, CARMINE TRAMUNTI, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which

a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2. At the time and place aforesaid, said Court was conducting the trial of a criminal case entitled United States of America v. Carmine Tramunti, Michael Hellerman, Murray Taylor, Philip Bonodonna, Vincent Gugliaro, et al., Indictment No. 70 Cr. 967, in which indictment CARMINE TRAMUNTI, the defendant herein, was charged with violations of the federal securities laws, the mail fraud statute and the conspiracy statute, under Title 15, United States Code, Section 78j(b) and Title 18, United States Code, Sections 1341 and 371.

3. It was material to said trial to ascertain whether the defendant CARMINE TRAMUNTI met and spoke with Michael Hellerman or Jack Kelsey at the Americana Hotel in New York City in November 1969, what was said at this meeting and by whom.

4. At the time and place aforesaid, CARMINE TRAMUNTI, the defendant, appearing as a witness in his

own behalf before said Court, testified falsely under oath before said Court, with respect to the aforesaid material matter as follows:

Q. Did Hellerman send you a bottle of liquor when you were watching Englebert Humperdink?

A. Not to my knowledge, he never sent me no liquor.

Q. Did you go to the Americana, to a show where Engelbert Humperdink was playing?

A. Maybe yes and maybe no.

* * *

Q. Did you ever go to the Americana to see a show?

A. Yes. I went to the Americana a lot of times.

Q. And have you ever seen Engelbert Humperdink at the Americana?

A. Yes, I saw him twice.

* * *

Q. And when you were there did anybody send a bottle of liquor over to your table?

A. I don't remember if anybody sent me liquor.

Q. And did you then come over to a table where Hellerman and Kelsey were sitting?

A. Me?

Q. You.

A. Never.

Q. Did you say hello to Kelsey?

A. I don't know him, so how can I say hello?

Q. Did you say hello to Hellerman?

A. How can I say hello? I don't know him.

Q. Did you thank Hellerman for sending the liquor?

A. How could I thank him?

Q. Did you ask Kelsey how things were?

A. I don't know Kelsey.

Q. Have you ever met Jack Kelsey, Mr. Tramunti?

A. Never in my life. Never in my life....

5. The aforesaid testimony of the defendant CARMINE TRAMUNTI, as he then and there knew, was untrue in that the defendant CARMINE TRAMUNTI did meet and talk with Michael Hellerman and Jack Kelsey at the Americana Hotel in November 1969.

(Title 18, United States Code, Section 1623).

s/ George Baer
Foreman

s/ Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney

* * * *

the course of the trial is evidence. It will only come from those two sources. I do have an opportunity to talk with you and tell you in kind of brief detail an outline of exactly what the government intends to prove the evidence will establish in this case. In other words, to kind of give you an overall framework, a road map in which you can place the testimony of the individual witnesses as they take the stand and testify and to look at the big picture.

Let me tell you at the outset this is going to be a very simple case. This is a case about an obstruction of an inquiry into the truth. This is a case of intentional evasion by a witness of his sworn responsibility to tell the truth. This is a case of a witness telling deliberate falsehoods under oath at a criminal trial before a jury of 12 citizens sitting in this very courthouse which was seeking to discharge its lawful responsibility of determining the guilt or innocence of several men who were on trial facing serious criminal charges.

The government will prove that a criminal trial was held in this courthouse in which several men were being prosecuted for violations of the federal securities laws. These charges, ladies and gentlemen, related to a scheme, a scheme or a plan to rig and manipulate the price of the stock of a company called Imperial Investment Corporation.

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The purpose of this rigging, the purpose of this manipulation of the stock was to perpetrate a fraud on the public and to deceive the purchasers of the stock, that is people in the street, normal people who buy and sell stock like anything else and they were believing they were getting something better than they were getting. In other words, to cheat them.

The proof will show that during the course of that scheme, this stock manipulation scheme, the defendant, Carmine Tramunti, the gentleman sitting over there in the blue shirt at the second table, met on two occasions with people involved in the Imperial stock fraud scheme.

One meeting was in a Manhattan restaurant called Gatsby's. The other meeting was at the Americana Hotel in New York City. At the trial of the charges against the men charged with perpetrating this criminal stock fraud the defendant, Carmine Tramunti, took the stand, testified under oath as a witness. Instead of telling the truth, as he swore that he would, Mr. Tramunti deliberately lied and concealed the true facts from the jury that was there to deliberate upon the case.

When asked whether or not he attended the meeting at Gatsby's Restaurant Tramunti swore he did not. When asked whether he met anyone at the Americana Hotel he swore he did

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not. When asked if he even knew some of the people at these meetings Tramunti also swore he did not. Thus the case, in a nutshell, ladies and gentlemen, is one of deliberate perjury, deliberate lying and deliberate concealment.

Since Mr. Tramunti is charged with lying at a criminal stock fraud trial there will be some references to stock in a company called Imperial Investment Corporation. I think I should make a couple of remarks about that.

I want to assure you that you won't have to be an expert on the stock market. That you won't have to be an expert on Wall Street. That you won't have to be an expert on the securities business to understand what this case is about. This case revolves around the simple issue of whether or not a man told the truth when he should have.

As you probably know stock represents an ownership interest in a company. Thus if you own a share of General Motors stock or IBM or the Telephone Company, you own a little piece of the company.

Stock, however, is a little different than other kinds of goods or merchandise because we can all go to the grocery store. We can look at a loaf ofbread or look at a peach or a pear or an apple and get some idea whether it's good or whether the merchandise is rotten.

You can't do that with stock because stock

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certificates are just pieces of paper and stock certificates for bankrupt tin mining companies don't look altogether much different than stock certificates for General Motors or the Telephone Company or any of the giants that we have all heard about.

b3

As a result, Congress enacted certain laws during the great depression --

MR. GOLDBERG: I object to all of this, your Honor.

THE COURT: Sustained.

MR. MAFTALIS: There are certain laws which regulate the buying of stock and selling of stock which are aimed to protect the public. These violations of these laws, criminal violations of these laws, were the subject of the criminal prosecution and trial which was held in this courthouse at which Mr. Tramunti is charged with committing perjury.

Let's examine a little more specifically what the evidence in this case will show. You heard a lot of names mentioned when his Honor was conducting the selection of you jurors. I am sure you obviously know the purpose of that. That was to make sure that none of the jurors who are selected to try this case would know any of the people involved, whether witnesses, whether the defendant, whether the lawyers, or whether anybody whose name might come up

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during the course of the testimony. That is so that the defendant could get a fair trial and the government could get a fair trial.

Now let's get down to some of the more important names. The proof will show that during the years 1969 and 1970 certain people were involved in a scheme, a criminal scheme to rig and manipulate the price of the stock of a company called Imperial Investment Corporation. Imperial Investment Corporation, the proof will show, is a company which had little real value. It was basically a shell. In order to successfully carry out the plan to rig and manipulate the price of Imperial Investment Corporation stock the people who were involved in the scheme had plans, they had meetings, they had discussions.

These meetings were attended by several people, including men like Michael Heller man, whose name you will hear throughout the trial, Murray Taylor, Johnny Dioguardi, John Kelsey, Vincent Gugliaro and Philip Bonodono.

The evidence will show that in the fall of 1969 these men met at a restaurant in Manhattan called Gatsby's. Among the people present there wefe a man named Murray Taylor, a man named John Dioguardi, a man named Philip Bonodono, a man named Vincent Gugliaro and a man named John Kelsey.

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In addition to these people who were present at that meeting there was another person present. That person was the defendant, Carmine Tramunti. The evidence will establish that at this meeting at Gatsby's Restaurant there were discussions about the Imperial stock manipulation scheme and Mr. Tramunti was present. The proof will also establish that shortly after this meeting at Gatsby's Mr. Tramunti met with two of the other participants in the Imperial stock manipulation scheme named John Kelsey and Michael Hellerman.

The proof will show that in early November, 1969, that Mr. Tramunti met with Mr. Hellerman and he met with Mr. Kelsey at the Americana Hotel during the course of a show in which the entertainer, Engelbert Humperdink, the singer, was entertaining.

The testimony will show that several of the participants in the Imperial stock fraud were brought to trial on criminal charges in this courthouse. As I said previously, at that trial the defendant, Carmine Tramunti, testified as a witness. He took an oath to tell the truth. The oath he took is the very same oath that every witness who will testify in this trial before you will take. "You do solemnly swear that the testimony you are about to give to this court and jury shall be the truth, the whole truth

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and nothing but the truth so help you God."

Instead of answering truthfully, as he had taken an oath to do, Mr. Tramunti resorted to perjury. He falsely swore that he had never attended the meeting at Gatsby's. He falsely swore that he had never met Hellerman and Kelsey at the Americana Hotel.

Indeed, Tramunti even falsely swore that he didn't even know Hellerman, that he didn't even know Bonodono, that he didn't even know Kelsey, that he didn't even know Taylor and that he didn't even know Gugliaro, all of whom he had met during the course of the Imperial scheme.

As a result, what happened? The jury, the 12 citizens who were there trying the case, were deprived of what they were entitled to. They were deprived of truthful testimony. That, in a nutshell, ladies and gentlemen, is what the government will prove.

The government will call as witnesses in this case, ladies and gentlemen, people who participated in the Imperial stock manipulation scheme. Needless to say, ladies and gentlemen, because these men were involved in this criminal activity and indeed other criminal activities and we will bring that all out, they haven't been models of good conduct in the past. The government offers their testimony to you not because they have been models of virtue,

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because they are far from that, but because these are people who can give you the inside picture of what happened and tell you what they did and tell you what Mr. Tramunti did.

Naturally, the only people who can give you that kind of inside picture are people who participate in a criminal scheme. We do have the testimony of some of these participants in the Imperial scheme who will tell you exactly what happened.

In addition, the testimony of these participants will be substantiated or verified by other evidence in this case. This will be a very simple case. It will be a very short case. It won't take very long to try.

It's a very important case, both to the defendant on trial and to the government. If you use your common sense, ladies and gentlemen, and focus simply on the specific charges in this case and not on any peripheral issues designed solely to confuse you and distract your attention, then you will find that your job is an easy one. The issue before you is not whether or not Mr. Tramunti commited stock fraud or was part of the stock fraud scheme. That is not the issue here. The issue here is a simple one, did Mr. Tramunti deliberately violate his oath to tell the truth and lie in a criminal trial in this courthouse? And I submit to you that

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that charge will be proven.

I submit to you on behalf of the government that after you have heard all the evidence in this case, ladies and gentlemen, you will be convinced beyond any reasonable doubt of the guilt of the defendant, Carmine Tramunti, of the charge of perjury in this case. I ask you to consider what I have said in this opening statement to be a commitment, a commitment as to what the evidence will show, for the government is going to prove during the course of this trial what I have said in this opening statement and I ask you to hold me accountable.

One last observation. Please do not make up your minds as to the guilt or the innocence of Mr. Tramunti until you have heard all the evidence in the case and then you have listened to his Honor, Judge Bauman's instructions on the law which you should apply to the evidence.

If you do that then both the government and Mr. Tramunti will get a fair trial and that is all we can ask of you.

MR. GOLDBERG: May I reserve a motion on Mr. Naftalis' opening to a more propitious moment?

THE COURT: Do you feel that you want to open now or what?

MR. GOLDBERG: No. I would like a ruling before I open.

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THE COURT: All right.

Ladies and gentlemen of the jury, I am going to excuse you now until five minutes after two. I say five minutes after two because I mean that. I must caution you, and I do caution you -- I order you that you are not to discuss this case among yourselves or with anyone else until it is finally submitted to you. You are not to read anything about it in the papers should there be anything in the papers about it. You are not to listen or watch anything on radio or television should it appear on either of those media.

In other words, I order you not to read, see or hear anything that pertains to this matter should it appear in the news media. I order you, and I mean this, should it come to my attention that you have breached my order there are very unpleasant possibilities.

I order you not to discuss this case among yourselves or with anyone else until it is finally submitted to you.

You may retire.

(Jury left the courtroom.)

THE COURT: Yes, Mr. Goldberg.

MR. GOLDBERG: Your Honor, I am going to formally move for the withdrawal of a juror and the

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delcaration of a mistrial or, in the alternative, for the right to refer in my opening to the acquittal of this defendant and the conclusive determination that he was not a participant in any criminal activity.

If your Honor recalls, Mr. Naftalis said that "We will show that the people involved", his use of the word involved, "in the scheme had meetings, and that Carmine Tramunti was a part, he was at the meetings".

He has classified the people at the meetings as people involved in the scheme. He said also that Hellerman and Kelsey would give an inside picture -- Hellerman and Kelsey, participants in the scheme, would give an inside picture as to what Mr. Tramunti did. And then rather slyly, I suggest, he said, "The issue, of course, is not whether he is part of the scheme in this case", but the impression was very clearly laid before this jury that Carmine Tramunti had some participation in this scheme.

It seems to me, one, the Government is seeking to relitigate facts conclusively determined against it although it says it is not. That is the effect of its opening.

THE COURT: I promise you I will see to it that they didn't.

* * * *

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JAMES SCHREIBER, called as a witness by the Government, being first duly sworn, testified as follows:

MR. NAFTALIS: May I ask Mr. Schreiber a few questions first?

THE COURT: Yes.

EXAMINATION

BY MR. NAFTALIS:

Q You are an Assistant United States Attorney?

A Yes.

Q You are assigned to the Frauds Unit of the United States Attorney's Office?

A Yes, sir.

Q In the course of your official duties as Assistant United States Attorney are you assigned to prosecute the At-Your-Service Leasing stock fraud case?

A Yes, I am.

Q What is the name of that indictment and the number?

A U. S. against Aloi and, I believe, 16 others. The indictment is 73 Cr. 699.

Q In connection with your preparation of that case I want to direct your attention to last week. Do you recall the day when Attorney General Richardson came to

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speak with us?

A Yes, I do.

Q Do you recall on that particular day --

THE COURT: That is a particularly memorable occasion now.

MR. NAFTALIS: The last time.

Q During the course of that day did you have occasion to interview Mr. Gilbert Dragani?

A I believe it was the same day, yes.

Q Did that interview relate to the At-Your-Service Leasing case or relate to anything else? What did it relate to?

A It related to the At-Your-Leasing Service case. I was contemplating calling Mr. Dragani as a witness for the Government in connection with that case.

Q Before I get into the photo spread, I want to ask you a question.

Did you at any time prior to the time Mr. Dragani looked at any photographs mention the name Carmine Tramunti to him in any way, shape or form?

A No, sir.

Q Did you mention to him in any way, shape or form that there was another case involving Mr. Carmine Tramunti?

A Absolutely not.

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Q Did you encourage him in any way to give information which would help; us in another case other than the At-Your-Service Leasing prosecution?

A No, sir.

Q I show you a bunch of photographs, which have been marked Defendant's Exhibit A for this hearing, and ask you, sir, if you can tell us if those are the photographs that you had with you at the time you questioned Mr. Dragani?

A Yes, sir, they appear to be.

Q Can you tell us the circumstances under which Mr. Dragani came to look at all or any of those photographs?

A Yes, I can. I asked Mr. Dragani whether he could recall seeing an individual by the name of Ralph Lombardo up at Hellerman's office on a particularly relevant day in connection with the At-Your-Service Leasing case.

The particular day was a closing, one of two closings, of the issue up in Hellerman's office.

Q I don't think we have to get into the facts of the At-Your-Service case.

A He said he wasn't sure so I picked up one of the photographs of Ralph Lombardo out of an envelope of these photographs which I think they are Exhibit A and the

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other photographs were spread out on my desk in a random fashion. I held up the picture of Lombardo to Mr. Dragani and I asked him whether he was familiar with this individual and I held it up to him like this. Mr. Dragani was sitting directly across my desk. He looked at the photograph and he said, "I don't believe so" and then he reached across my desk and grabbed out of the pile this one of the defendant Carmine Tramunti and he said, "But I do know him".

MR. NAFTALIS: Can we mark this one here as A-1.

THE COURT: I think it's already been marked.

MR. NAFTALIS: I am sorry.

Q This is referring to A-1 for identification in this hearing.

A I said or I asked him whether he was sure and he said, yes, he was sure, he saw him across the hall. I immediately asked Mr. Dragani to step outside and I tried to reach you.

You were out of your office and I phoned Mr. Rakoff who I spoke to and I told him to get in touch with you immediately and to call me and you called me and I told you what had happened. In the meantime Mr. Dragani was outside of my office. He was not present

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during that conversation.

Q And subsequently Mr. Rakoff and I came down and chatted with Mr. Dragani inyour presence and in SEC Agent Soffer's presence?

A In fact, you insisted on talking to him at that point, much to my chagrin, because I was trying to prepare him for trial.

MR. NAFTALIS: I have nothing else.

MR. GOLDBERG: I have nothing, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Mr. Goldberg, you have heard Mr. Naftalis' statement with respect to the second exhibition of pictures.

Do you want him to take the stand or what?

MR. GOLDBERG: Your Honor has ruled already that that spread was a fair one with respect to Mrs. Kelsey. To the extent that the prosecutor would take the stand in this case and outline what he did, perhaps it would be necessary.

THE COURT: Do you want him?

MR. GOLDBERG: Yes.

THE COURT: I don't think it's necessary for you to remain, Mr. Schreiber.

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G A R Y N A F T A L I S , called as a witness, being first duly sworn, testified as follows:

EXAMINATION

BY MR. GOLDBERG:

Q Mr. Naftalis, you got a call from James Schreiber some time, was it, last week?

A Yes, sir.

Q What did Mr. Schreiber say to you?

A Mr. Schreiber said to me -- I don't know whether he spoke to Mr. Rakoff first or not but he indicated to me that he had someone there who might have some information which might be of help in our case. I think he did indicate either in that conversation or in a subsequent conversation something to the effect that I am sort of sorry I found this out because it will be messing up my case with dragging somebody off to your case.

Q Did you ask him whether he had shown any pictures -- well, did you ask him what he meant? Or how this man might be of use? This is before you met the man.

A What he told me was something to the effect that he thinks he has a witness who might be able to put Hellerman and Tramunti together,something to that effect. He either said that or he has a witness who might be able

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to help you in some way.

He didn't say put Hellerman and Tramunti together. He said he has a witness who he can put in Hellerman's office.

Q Did you go down to his office?

A Immediately.

Q Quickly?

A With Mr. Rakoff. We were very excited about that news.

Q You found this gray haired gentleman that has been identified as Mr. Dragani sitting there, is that right?

A Yes.

Q Did you see a picture spread on the desk of Mr. Schreiber?

A I don't recall whether at the time we entered immediately or not the pictures were out but I do recall that at some time during the course of the time we were there the spread of photographs which is Defendant's Exhibit A were on Mr. Schreiber's desk as he sits facing you, his left hand, kind of spread out, kind of a random way, some of them on top of each other, others spread out.

They were sort of in a messy state of dis-

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arrangement, no particular order or anything.

Q Did you come down to Schreiber's office with your own spread?

A I don't recall frankly whether we came immediately with our own spread or whether or not during the course of speaking to Mr. Dragani I asked Mr. Rakoff to go up and get some other pictures. It was either one or the two. I know some time during the course of it we came in with a spread to show him.

Q Did Mr. Schreiber tell you he had shown a spread to Mr. Dragani? It was only a week ago, right?

A Right. He told me he picked them out and my best recollection is he indicated he did pick this photograph out.

Q If you saw the spread on Mr. Schreiber's desk and he said he picked them out from the spread why did you ask Mr. Rakoff to get a spread?

A It seemed to me that this evidence seemed to be so absolutely devastating and so helpful to our case --

Q You hoped.

A We hoped. It came at the eleventh hour from such an unexpected source that we wanted to be 100 per cent sure, at least in our judgment, that the evidence was accurate and reliable and the man was telling the truth.

* * * *

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* * * *

are going on here?

THE WITNESS: Your Honor, I first remember the way this first came up is that I received a call from Mr. Schreiber who said to me over the phone that he had been in the process of showing a spread to Mr. Dragani that he had not even fully finished putting out the spread when Mr. Dragani had -- Mr. Schreiber's exact words were, grabbed for one of the pictures of someone Mr. Schreiber said he wasn't interested in showing -- wasn't the person he was interested in having Mr. Dragani identify, and that Mr. Dragani had said I met him at Michael Hellerman, in Stoma, which was the name Michael Hellerman had given Jard after he had taken over.

I said I'm sure Gary and I would like to talk to him -- he had tried to get Gary, but he wasn't in his office and I went searching for Gary. Gary then, I believe, talked to Jim over the phone and said, can we come on down and Jim said yes and then we went down.

When we went down, the photo spread that Jim had shown was in a pile, at one side of the desk and the photo of Tramunti was not on the top of the pile at that moment, and my memory is that at some point after an initial discussion to the effect that this is Gary Naftalis and Jed Rakoff and we are interested in talking to him, Jim then put

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that spread out and again Mr. Dragani, as Jim had reported previously, reached immediately for the photo of Mr. Tramunti. Gary then asked me to go get the photo spread that we had assembled. We had not at that point shown it to Constance Kelsey. To my memory the only people who had seen it up to that point were the FBI Agent and myself and I brought that down and we showed that photo spread, put it out on the table again and he immediately identified the photo of Mr. Tramunti.

My memory is specific on one point which is that we at no time mentioned the name Carmine Tramunti. The reason I remember that, when we went outside to the secretary who was outside of Mr. Schreiber's office, to type out the subpoena I said to Gary, Gee, we haven't mentioned the name Tramunti at all but here it will appear on the subpoena, do we have to put it on, and Gary said yes, that's what is required to make it a legal subpoena, but we don't have to tell him the person whose name appears is the same person he has identified or anything about the case at all.

So, that's what indeed was done.

MR. GOLDBERG: I have no cross.

THE COURT: You may step down.

(Witness excused.)

THE COURT: I will hear any argument you wish to make, Mr. Goldberg.

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MR. GOLDBERG: May I proceed?

THE COURT: Yes.

MR. GOLDBERG: The defense calls the defendant, if your Honor please.

C A R M I N E T R A M U N T I, called as a witness, having been duly sworn, testified as follows:

MR. GOLDBERG: May I have a copy of the indictment, your Honor?

THE COURT: Yes.

Here, use this one, Mr. Goldberg.

MR. GOLDBERG: Thank you.

DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Sir, you are the defendant in this case?

A Yes, sir.

Q Will you speak up in a loud, clear voice and direct your comments to me and to the jury, as well as the court and Mr. Naftalis, if you can, in a loud, clear voice.

How old are you?

A 63.

Q Referring to count 1 of this indictment, you testified as a witness in a case in late '69 entitled United

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States v. Aloi, et al., did you not?

A Yes, sir.

Q You took an oath, did you, at that time?

A Yes, sir.

Q And you knew at that time that you tok an oath to tell the truth, is that right?

A Yes, sir.

Q Were you truthful?

MR. NAFTALIS: Objection and I move to strike.

THE COURT: Sustained. Strike it out.

Q You were asked, were you not, this question:

"Q In 1971 did you know the defendant, Michael Hellerman?

"A No, sir."

Was that true or false?

A True.

Q Do you know Michael Hellerman?

A No, sir.

Q Have you ever met Michael Hellerman?

A No, sir.

Q Do you know though whether Michael Hellerman might have seen you at the Americana Hotel?

A He might.

MR. NAFTALIS: Objection.

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THE COURT: I will permit him to say whether he knows. However, now whether he might have seen him. I will permit him to say whether he knows whether Michael Hellerman did see him.

Q Do you know whether Michael Hellerman did see you at the Americana Hotel at any time?

A I don't know. He might have seen me.

MR. KAFTALIS: Objection.

THE COURT: Sustained.

Q Have you been to the Americana Hotel?

A Yes, sir.

Q Did you ever see Engelbert Humperdink perform?

A Yes, sir.

Q You were asked this question:

"Q Have you ever met Michael Hellerman or Mr. Hellerman?

"A No, never met him."

Do you recall being asked that in 1971 and having given that answer?

A Yes, sir.

Q Was it true?

MR. KAFTALIS: Objection.

THE COURT: Just ask him about the facts.

MR. GOLDBERG: I am going over the testimony.

THE COURT: I know what you are doing. Ask him

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about the facts. At the time he answered that question did you know Michael Hellerman.

Q At the time you answered that question did you know Michael Hellerman?

A No, sir.

Q "Q Now is it your testimony that you don't know Michael Hellerman."

A Yes, sir.

Q Were you asked this question:

"Q You have seen Michael Hellerman?

"A I have never seen Michael Hellerman."

Do you recall that answer?

A Yes, sir.

Q Was that true?

A Yes, sir.

MR. NAFTALIS: Objection.

THE COURT: It doesn't make any difference whether he asks if it's true or whether he says "Had you at that time you testified ever seen Michael Hellerman."

Q Had you at that time ever seen or met Michael Hellereman?

A No, sir.

Q "Q Have you ever talked to Michael Hellerman?

"A No, sir, never talked to him."

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Q Do you recall that?

A Yes, sir.

Q Had you at that time ever talked to Michael Hellerman?

A I never spoke to Michael Hellerman.

Q Do you recall this question:

"Q Did you talk to him last Wednesday?

"A Where?

"Q Did you talk to him last Wednesday?

"A No, sir."

Do you recall that answer?

A Yes, sir.

Q Had you in 1971 at the time you testified ever talked to him on Wednesday or at any other time?

A I never spoke to Michael Hellerman.

Q Were you asked this question referred to in count 1:

"Q Did you talk to him at any time ever?

"A No, sir, never spoke to Michael Hellerman."

MR. NAPTALIS: You read it wrong. "No, sir, never spoke to Mike Hellerman."

Q "Q Were you or did you, sir, at that time, ever speak to Michael Hellerman?"

A No, sir, I never spoke to Michael Hellerman.

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Q Were you asked this question:

"Q Prior to the indictment in this case did you knowwho Michael Hellerman was?

"A No, sir, I don't know."

Was that your answer?

A Yes, sir.

Q At the time you testified did you know who Michael Hellerman was?

A No, sir.

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Q Now, you heard Michael Hellerman testify that he met with you or saw you in Jard Products, J-a-r-d.

Do you recall that?

A Yes, sir.

Q During this trial, correct?

A Yes.

Q Were you, sir, ever at any time ever in the premises of a business known as Jard Products?

A Never was there in my life.

Q You heard a man by the name of Gilbert Dragani testify that you were in the office of Michael Hellerman for an hour and a half some time in 1970.

Do you recall that?

A Yes, sir.

Q Did you ever see Gilbert Dragani before he testified here yesterday?

A No, sir. That was the first time I saw him, in this courtroom.

Q During this trial?

A This trial.

Q Were you ever at any time ever in the office or any office of Michael Hellerman?

A No, sir.

Q You heard Michael Hellerman testify that you were

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at a wedding in 1967.

Do you recall that?

A Yes, sir.

Q And you heard Mr. Barone testify to that, is that correct?

A Yes, sir.

Q Were you at a wedding in 1967?

A I would say yes.

Q Did you then ever see, speak with or converse with Michael Hellerman?

A No, sir.

Q How many people were at that wedding referred to by Mr. Barone?

A A big amount of people. I would say about seven to eight hundred people.

Q Were you, sir, ever in your life, at a night club known as the Pussy Cat?

A Yes, sir.

Q You have been there?

A Yes, sir.

Q That is a night club, is that right?

A I would say it is a bar and a lounge.

Q Do you know, of your own knowledge, whether when you were there Michael Hellerman might have been or was --

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MR. NAFTALIS: Objection to what might have been.

THE COURT: Sustained.

Q Whether when you were there Michael Hellerman was in the night club? Do you know?

A No, sir.

Q Did you ever meet with him, talk with him or converse with him at the Pussy Cat Lounge?

A Never did in my life.

Q McCarthy's Steak House, have you ever heard of that?

A Yes, sir.

Q That is a steak house in Manhattan, is that correct?

A Yes, sir.

Q Have you ever had a steak or been to McCarthy's Steak House in your life?

A Yes, sir.

Q Do you know whether when you were at McCarthy's Steak House on any occasion Michael Hellerman was there?

A He was never there.

Q Did he ever speak with you?

A No, sir.

Q Did he ever converse with you?

A No, sir.

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Q Did he ever talk with you?

A No, sir.

Q In late 1971 there came a time, did there not, when you were in a hallway with your lawyer outside of Room 110?

A Yes, sir.

Q And that lawyer was Mr. Greenberg?

A Yes, sir.

Q Did you ever talk at that time to Michael Hellerman?

A No, sir, never spoke to him.

Q Did you ever tell him in the hallway of this Court House, "You better do the right thing," in words or substance?

A I never said that.

Q Were you at all times with your attorney?

A Yes, sir.

Q You have been to the Americana Hotel several times, have you not?

MR. NAFTALIS: Objection, your Honor. I think the leading should stop at this point. It is his own witness. He can ask how many times he was at the Americana --

MR. GOLDBERG: I will accept that.

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MR. NAFTALIS: He doesn't have to put words in his mouth --

MR. GOLDBERG: May I object to the way the objections are phrased?

THE COURT: Just put a question, please.

Come to the side bar.

(At the side bar.)

THE COURT: Your client whispered to me something which I wish to put on the record so that everybody knows what he is whispering to me about.

He said, "Your Honor, there is a newspaperman in the courtroom," and I said, "I know that."

Proceed.

(In open court.)

BY MR. GOLDBERG:

Q Now, sir, referring to Count 2 of the indictment, the question -- were you asked this question in 1971 while under oath and did you give this answer;

"Q Do you know John M. Kelsey?

"A No, sir.

"Q Did you ever meet Mr. Kelsey?

"A Never met him either."

At the time you gave that sworn testimony did you know John M. Kelsey?

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A No, sir.

Q Had you ever met John M. Kelsey?

A No, sir.

Q Did you ever meet with John M. Kelsey and his wife or Marianne Rapisarda Hellerman and her husband, Michael Hellerman, at the Americana Hotel?

A No, sir.

Q Did you ever go to a table where they were seated during the opening of the Engelbert Humperdinck show to thank them for any bottle of liquor?

A No, sir.

Q Did they send you a bottle of liquor?

A Nobody sent me no liquor.

Q But you were at the Americana Hotel, were you not?

A Yes, sir.

MR. NAFTALIS: Objection to the leading, your Honor. Let him answer questions.

THE COURT: I don't quite understand, were you asking was he at the Americana Hotel at the opening of Engelbert Humperdinck?

MR. GOLDBERG: At the time Engelbert Humperdinck opened --

THE COURT: Were you present at the Royal Box

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of the Americana on the night Engelbert Humperdinck opened?

THE WITNESS: Yes, sir, your Honor.

THE COURT: All right, go ahead.

Q How many people were in the audience, do you recall?

A Well, opening night, the place is packed.

Q Hundreds?

A I don't know how much the room holds. Maybe a thousand.

Q Referring your attention to Count 3 of the indictment, were you in 1971, while under oath, asked these questions and did you give these answers:

"Q Do you know Murray Taylor?

"A No, sir.

"Q Ever meet Murray Taylor?

"A Never met him either."

Sir, did you give those answers to the questions I have just read?

A Yes.

Q At the time you gave those answers, did you know or had you ever met Murray Taylor?

A No, sir, I never met Murray Taylor.

Q In 1971 were you asked these questions and did you make these answers while under oath:

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"Q You testified, I believe, that you don't know Murray Taylor, is that right?

"A The honest truth, I don't know Murray Taylor.

"Q You never met Murray Taylor?

"A I never met him, never.

"Q And you had never seen him before the indictment in this case?

"A That's right."

Did you make those answers to those questions that I have just read?

A Yes, sir.

Q And, sir, at the time you gave that sworn testimony did you know Murray Taylor?

A No, sir.

Q Had you ever met Murray Taylor?

A Never met him.

Q Had you ever seen him before the indictment in the case of United States versus Aloi?

A I never saw Murray Taylor.

Q Sir, were you asked in 1971 this question:

"Q Did you see Taylor in Gatsby's?

"A No, sir."

Do you recall that question and that answer?

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A Yes, sir.

Q I am asking you, sir, at the time you gave that answer had you at any time previously seen Murray Taylor in Gatsby's?

A Never saw Murray Taylor.

Q Were you ever in Gatsby's?

A Yes, sir.

Q How many times were you in the New Gatsby's?

A The New Gatsby's, I would say three to four times.

Q Did you ever meet with anyone to conduct or carry on any discussion relating to any stock?

A No, sir.

Q Did you ever meet with or discuss any stock or any matter with John M. Kelsey or Murray Taylor?

A No, sir.

Q Now, sir, referring your attention to Count 4, were you asked this question and did you give these answers to the questions I am now about to read, while under oath in 1971 in United States versus Aloi:

"Q Now, do you know the defendant Vincent Gugliaro?

"A No, sir.

"Q When for the first time do you recall

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having seen him?

"A Who, Gugliaro?

"Q Yes.

"A In this courtroom."

Do you recall those answers?

A Yes, sir.

Q Sir, at the time you testified in 1971 did you know Vincent Gugliaro?

A No, sir.

Q Had you seen him, to your recollection, any time prior to the time you saw him in the Courtroom 110?

A Never saw him.

Q There has been testimony that you were at a wedding in 1965 of a man by the name of Fusco?

A Yes, sir.

Q And you saw a picture, did you not --

A Yes, sir.

Q -- that was offered in evidence?

A Yes, sir.

Q Were you at such a wedding in 1965?

A I might have been.

Q That is eight years ago, correct?

A Right.

Q Did you in 1971, or do you now in 1973, recall

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whether Vincent Gugliaro was at that wedding?

A I can't recall that, sir.

Q Did you ever see him prior to the time you saw him in the courtroom?

A The only time I saw Mr. Gugliaro was in the courtroom.

Q How many people were at the wedding, if you can recollect, some eight years ago, in 1965, roughly? Ten or more?

A I would say a few hundred.

Q Referring your attention to Count 5, you were asked this question under oath in 1971:

"Q Do you know defendant Philip Bonodono?

"A No, sir."

Did you give that answer to the question I have just put?

A Yes, sir.

Q At the time you testified in 1971 in United States versus Aloi, did you know Philip Bonodono?

A No, sir.

Q Did you ever meet with him, converse with him, or talk with him at the time you testified?

A I didn't know Bonodono, never conversed with him, I never spoke to him.

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Q "Q Is it your testimony that you never met Phil Bonodono?

"A Yes, sir, never met him.

"Q You never saw that man?

"A Never met him. Just in this courtroom."

Do you recall giving those answers to those questions that I have just put in the 1971 case of United States versus Aloi?

A Yes, sir.

Q At the time you testified under oath had you ever met Philip Bonodono or seen him except in Room 110 of this building?

A Never saw Philip Bonodono.

Q Referring your attention to Count 6, were you asked these questions and did you give these answers while under oath in 1971:

"Q Do you know anything about Imperial Investment Corporation?

"A No, sir.

"Q Did Murray Taylor explain the deal to you?

"A Me?

"Q Yes.

"A I don't know nothing about the deal. I don't even know him. How could he explain it

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to me?"

Did you give those answers to the questions I have just put to you?

A Yes.

Q At the time you gave those answers, had you had any discussions with Taylor, or anyone else, relating to the Imperial Investment deal?

A Never had a discussion with nobody.

Q Were you asked these questions in 1971:

"Q Apart from the time that you and Mr. Greenberg went to Gatsby's and met John Dioguardi, have you ever been there in the fall of 1969 for a luncheon with anyone else?

"A No, sir."

Do you recall giving that answer to the question just put to you?

A Yes, sir.

Q And, sir, at the time you gave that answer had you ever been at the Gatsby's Restaurant, the New Gatsby's Restaurant, for a luncheon with anyone else?

A No, sir.

Q Other than Mr. Greenberg and Mr. Dioguardi?

A That's right.

Q Sir, were you asked this question in the year

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1971:

"Q Mr. Kelsey has testified that he attended a lunchon with you, John Dioguardi, Vincent Aloid Murray Taylor, a man he said was Little Vinny and another man whose name he did not know, but he pointed to Mr. Bonodono, some time while Mr. Hellerman was on an out-of-town trip shortly after Mr. Taylor made his trip to Canada on the first Sunday or Monday of November, 1969. Did you attend any such meeting that Mr. Kelsey mentioned?

"A I never attended no such meeting.

"Q Mr. Kelsey said at this luncheon you had very little to say, you merely answered one or two questions and nodded your head. Did you do any such thing at any such luncheon?

"A No, sir, I never was at that meeting."

Do you recall those answers to those questions put to you in 1971?

A Yes, sir.

Q Sir, I am asking you now, at the time you answered the questions just put to you, in 1971, had you ever been at Gatsby's, or any place else, ever met with Murray Taylor, Kelsey or any of the people mentioned by Kelsey in connection with any matter having to do with stock known as

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Imperial Investment Corporation?

A I never was there, sir.

Q Sir, I am asking you to direct your attention to the witness Gilbert Dragani. All right?

You recall he was th man with the white hair yesterday?

A Yes, sir.

Q Do you recall he said you were at Michael Hellerman's office for an hour and a half? Do you recall him saying that?

A Yes.

Q I am asking you, sir, were you at the office of Michael at any time for however short a period of time?

A I never was there in my life. I don't even know where it is.

MR. GOLDBERG: I have no further questions.

MR. NAFTALIS: May I inquire?

THE COURT: Yes.

The defendant points out to me that he tilts his head in the manner in which he does because he hears better in the ear turned to the interrogator.

CROSS EXAMINATION

XX BY MR. NAFTALIS:

Q Mr. Tramunti, if you can't Hear me, just ask to

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have any question I ask yoou repeated.

Do you understand that?

A Yes.

Q And if you don't understand any question, just tell me and I will be happy to rephrase it, okay?

A Yes, sir.

Q Mr. Tramunti, would you tell us a little about yourself? What do you do for a living?

A I am in the coat manufacturing business.

Q Do you have your own company?

A Yes, sir.

Q What is the name of that company?

A Eiffel Classics Coat Corporation.

Q Do you own that company?

A I got 33-1/2 per cent share.

Q How much money did you invest in that?

MR. GOLDBERG: I object to this as remote, your Honor, to the issues on trial.

THE COURT: Mr. Naftalis, you are entitled to a reasonable interrogation into the defendant's background, and I shall permit that, but unless you can explain why how much he invested in his business is material, I will sustain the objection.

MR. NAFTALIS: I will go on to something else,

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your Honor.

Q What do you do for Eiffel Classics?

THE COURT: I didn't hear the question.

Q What do you do for Eiffel CLassics, you?

MR. GOLDBERG: May I be heard on an objection that I think should be brought to the Court's attention at the side bar with respect to this line of inquiry?

THE COURT: So far I don't see any necessity for a side bar conference, no. You may make whatever objection you like.

Q What do you do for Eiffel Classics, what is your job?

A Well, sometimes when I go in and the coats come back from the contractors I sort out some coats according to size, put tags on them, and the shipping clerks take them and ship them out.

Q You are saying your job is to sort out coats and put tickets on them?

A Yes.

Q That is your regular job, right?

A It is not my regular job.

Q But you do that, right?

A If I want to do it, I do it.

Q As a matter of fact, you are one of the bosses

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there, aren't you?

A Yes, sir.

Q And isn't it a fact what you do at Eiffel Classics, you just go in and do as you please, right?

A Right.

MR. GOLDBERG: I object to this, your Honor.

THE COURT: I will permit it.

Q Is that your only source of income, Mr. Tramunti, Eiffel Classics?

A Yes, sir.

Q You don't make anything from anything else?

A No, sir.

Q What are your wages, how much money do you make a year from Eiffel Classics?

MR. GOLDBERG: Your Honor, I object to this.

THE COURT: Overruled.

You may answer.

A Repeat the question?

MR. NAFTALIS: Would you read it back, Mr. Reporter.

(Question read.)

A 20 to 22,000 a year.

THE COURT: I didn't hear that.

THE WITNESS: 20 to 22,000 a year.

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Q Have you been making that over the last couple of years? Is that what you have been making from Eiffel Classics, 20, 22,000 dollars a year?

A A couple of years, yes.

Q Last two or three years?

A Yes.

Q Do you recall, sir, when you were interviewed by Assistant United States Attorney Wing after the filing of the indictment in this case --

MR. GOLDBERG: I object to this. I ask that a hearing be held on this subject.

THE COURT: He may answer that question.

Read the question.

(Question read.)

THE COURT: Were you interviewed by Mr. Wing after this indictment was filed?

THE WITNESS: This indictment here?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: I will see counsel at the side bar.

(At the side bar.)

MR. GOLDBERG: First of all, your Honor, Mr. Naftalis, from our discussion, knows that he is in jail and to go and ask him what he is doing now, what he does

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for Eiffel Classics, is misleading.

THE COURT: I agree. He didn't say anything devastating, but please don't ask questions that could result in a highly prejudicial answer and cause a mistrial.

MR. NAFTALIS: It wasn't meant for that, your Honor.

THE COURT: Well, whatever you meant, I mean, a fellow who drops an atomic bomb may not mean it but the consequences are devastating.

MR. GOLDBERG: I think if we are about to develop what he said post-arrest without an attorney that that calls for an evidentiary hearing.

THE COURT: What about that?

MR. NAFTALIS: I can obviously call Mr. Wing, if necessary, and we have the interview form where Mr. Wing advised him of his rights and he told a little different story about how much money he made and I think we are entitled to find out either he lied to Mr. Wing or on the stand here about his income.

THE COURT: Why can't he ask him if he told Mr. Wing something different?

MR. GOLDBERG: I would think if it is limited in that respect, I have no objection, and I will withdraw

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my motion for a hearing.

THE COURT: All right.

MR. NAFTALIS: Can I bring out the amount?

THE COURT: No, I don't really see -- what is the amount?

MR. NAFTALIS: $38,000. It was substantial.

MR. RAKOFF: It was substantial.

THE COURT: I don't need any accompaniment.

MR. GOLDBERG: I think this gets into a highly collateral matter --

THE COURT: I will permit him to ask that question, "Did you tell Mr. Wing that your income from Eiffel," whatever it is, "was $38,000," and we are not going into that.

You do know this whole area is discretionary and I have so far extended my discretion, but I want tyou to know that does not give you an absolutely free rein, Mr. Naftalis.

MR. NAFTALIS: Yes, sir.

Let me bring to the Court's attention another question I want to ask along similar lines.

Mr. Tramunti, however, has reported substantially less on his Federal income tax returns and I think I am entitled to bring it out, that it was sworn to --

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THE COURT: I don't.

(In open court.)

THE COURT: Go ahead.

BY MR. NAFTALIS:

Q You told us that you make something like $20,000, $22,000 and that is what you have been making over the last few years, is that right?

A Yes, sir.

Q Do you remember when you were interviewed by Mr. Wing, Assistant United States Attorney, after the filing of the indictment in this case?

A Yes, sir.

Q Isn't it a fact, Mr. Tramunti, that you told Mr. Wing a different amount of money that you made? Isn't that a fact, sir?

A I can't answer you. Tell me what I said.

MR. NAFTALIS: Shall I tell him or show him the document, your Honor?

THE COURT: You can put the question. I ruled you can put the question.

Q Isn't it a fact, sir, that you told Mr. Wing that your wages from Eiffel Classics was $38,000?

A Oh, no, sir. I could correct that in one second, right now --

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THE WITNESS: One second, your Honor --

THE COURT: Please don't address remarks to me, Mr. Tramunti.

THE WITNESS: All right.

MR. NAFTALIS: Please mark this.

(Government's Exhibit 8 was marked for identification.)

xx Q Mr. Tramunti, let me show you Government's Exhibit 8 for identification and direct your attention to the second page here, where it says, "Wages" --

MR. GOLDBERG: Object to the contents of a document not in evidence being read to a jury. He can ask if this refreshes his recollection, but he can't say where it reads --

MR. NAFTALIS: I was not going to do that. It reads "Wages," and I am not going to say the amount --

THE WITNESS: Well, you came out with the amount.

THE COURT: Put a question.

Q I direct your attention to page 2 of this document, to a number on this page, Mr. Tramunti, and I ask you, sir, whether this refreshes your recollection as to whether or not you told an Assistant United States Attorney named JOhn Wing in this very building that your wages were

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$38,000 a year? Yes or no.

A I never said --

Q Will you please answer the question?

A Well, I got to answer you on this, to correct this.

I never said my wages were $38,000. I filed for $38,000.

Q You say you filed in your income tax returns $38,000?

A Yes, sir.

Q For what year?

A Last year, '72.

Q What about the year before that?

MR. GOLDBERG: I object to this line of inquiry, your Honor, in line with our discussion.

THE COURT: Yes, I am going to sustain that.

MR. NAFTALIS: May his answer be stricken with respect to what he filed --

THE COURT: If you like.

(Pause.)

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THE COURT: You understand my ruling is not that you can't elicit what he filed in 1972 and question about that with relation to his previous answer. I'm just saying we are not goingto rummage around previous years. Is that clear?

MR. NAFTALIS: Yes, sir.

Q Mr. Tramunti, tell us a little bit about some of the other jobs you had before your present job.

MR. GOLDBERG: I object to this.

THE COURT: Overruled, sir.

Q What did you do -- what have you done before your present job with Eiffel Classics? Let me put it this way: How long have you been with Eiffel Classics?

A Close to ten years.

Q Been there close to ten years?

A I think it's nine years.

Q What did you do before that?

THE COURT: I think the appropriate form is you may address him as to what his former employment was.

Q What was your former employment that--

MR. GOLDBERG: Your Honor, may I object to prior to ten years ago as being remote in time?

THE COURT: Your objection is noted. Overruled.

THE COURT: What was your employment before Eiffel?

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THE WITNESS: I worked for a trucking firm named Wearing Apparel.

Q You say you have worked for Eiffel Classics for about ten years, right, so that brings us back to about 1963. Is that correct?

THE COURT: He said nine or ten years.

Q '63, '64?

A Yes.

Q Mr. Tramunti, do you recall being questioned under oath by a federal grand jury on November 30, 1966, and being asked this question:

"Q You don't remember where you worked two years ago?

"A That's right. Maybe I could have answered you last time, Mr. Tendy. I was unemployed, that's what I mean.

"Q Well, if you were, you were; if you weren't, you weren't.

"A I don't remember.

"Q You don't remember what you did two years ago?

"A That's right, I don't remember."

Do you recall being asked those questions and giving those answers when you were sworn to tell the truth before a federal grand jury?

A What year did you say? What year did you say?

Q November 30, 1966.

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A Well, if I said that, that's what I said then.

Q You tell us here, Mr. Tramunti, seven years later that you know at that time you were working for Eiffel Classics. Isn't that right? Yes or no.

A You got me a little confused here with these dates. Please now.

While I was working for Wearing Apparel --

Q No, the question was do you recall --

MR. GOLDBERG: I object. He is explaining his answer and was interrupted.

THE COURT:What is the pending question,please?

(Question read)

THE COURT: Answer the question.

A I was working for Wearing Apparel also while I had the interest i Eiffel Classics.

Q So you want to change your testimony that you gave a few minutes ago, Mr. Tramunti, where you said you only worked for Eiffel Classics, is that right, over the last nine or ten years?

A I said that now, but look how back you are going on me now.

Q Mr. Tramunti, when you testified before the federal grand jury in 1966 under oath --

MR. GOLDBERG: Your Honor, I object to this

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line of inquiry.

THE COURT: Overruled.

Q When you told them at that time that you didn't know what you were doing for a living two years before, that was a lie, wasn't that, Mr. Tramunti?

MR. GOLDBERG: I object to that, your Honor.

THE COURT: Overruled.

A I wouldn't say it was a lie.

Q It wasn't the truth, was it?

A Whatever answer you got there.

Q You do remember testifying before the grand jury then, don't you, Mr. Tramunti?

MR. GOLDBERG: I object.

THE COURT: Overruled.

A Yes.

Q You do remember you took an oath to tell the truth, didn't you?

A Yes.

Q And you recall giving those answers to those questions which I read to you?

MR. GOLDBERG: Object. It's repetitious. I don't mean to sit when I make an objection.

THE COURT: He has already testified to that on two occasions. Sustained.

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Q Mr. Tramunti, what did you do for a living in 1963?

MR. GOLDBERG: May the record reflect my objection, your Honor, as remote to the issues on trial? That's the ground of my objection.

THE COURT: Yes. The basis for my ruling is that it is abundantly clar that the court may in its discretion allow reasonable inquiry into a witness' background. At the time that it gets unreasonable in duration or otherwise I shall sustain your objections. We have not, in my view, reached that point yet.

Q Mr. Tramunti, can you tell us what you were doing for a living in 1963?

A I was working for Wearing Apparel Trucking Company.

Q Would you recall being asked about that before the grand jury under oath on December 1, 1966, and saying that you couldn't remember --

MR. GOLDBERG: Object to that form.

THE COURT: I think the proper form is --

MR. NAFTALIS: I will read it, your Honor.

THE COURT: You know. I don't have to instruct you.

Q Do you recall being asked these questions and giving these answers:

"Q Before the paint store what did you do?

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"A I don't remember now. You got me.

"Q You can't remember?

"A Can't remember.

"Q It was only three years ago.

"A Three years ago?

"Q About, yes.

"A Don't remember.

"Q Are you telling this jury you don't know what you did for a living three years ago before you opened up the paint store?

"A I'm saying I don't remember.

"Q You don't remember?

"A No, I don't remember. If I did I'd gladly answer you right away."

MR. GOLDBERG: Your Honor, the manner of the reading of the questions lacks impartiality.

THE COURT: A little less drama, please.

Q Do you recall being asked those questions and giving those answers when you testified under oath before a federal grand jury?

A Yes, what you got there; yes, sir.

Q And that wasn't the truth, right?

A Yes, sir.

Q You lied?

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A You're saying it.

Q Well, didn't you just answer a moment ago that that wasn't the truth and you said yes?

A I said everything that's on that paper I answered. You're reading a grand jury transcript of me, and I said yes, I said that there.

Q Mr. Tramunti, haven't you testified here as to what you were doing ten years ago in 1963?

A Yes.

Q When you went before the grand jury in 1966 you were asked about what you did three years before, what you did for a living, you know, a job, and didn't you then say, "I don't remember what I was doing"?

A I don't remember now.

Q You don't remember now?

A You are reading from the transcript.

MR. MAFTALIS: Your Honor, may the witness be structed to answer the questions?

THE COURT: Yes.

Just confine your statements to answers to the questions, please.

Q Is it your testimony that you didn't remember in 1966 what you were doing for a living in 1963?

A I can't say that, the way --

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THE COURT: Read the question, please.

A The way you are saying it to me. You have got me confused.

(Question read)

THE COURT: Do you understand the question?

THE WITNESS: Yes, sir.

(To Mr. Naftalis) And I answered you.

Q What was your answer?

A Whatever I said there is the answer I gave.

Q So your answer is you didn't remember at the time?

A Right.

Q But now you do seven years later, what you did for a living then. Is that correct?

A '65, that's eight years ago. I say in '64, 1964--

Q Maybe you don't understand my question.

MR. GOLDBERG: Wait, your Honor. He may ask--

THE COURT: Let me hear one at a time, please.

MR. GOLDBERG: I object to his interrupting the witness. He may ask your Honor for a direction that the witness is not responsive, but he may not jump in on him.

THE COURT: Read what the witness started to say, please.

Although I must say that that kind of behavior isn't novel in this case.

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MR. GOLDBERG: The shoe fits, your Honor.

(Answer read)

THE COURT: Did you want to continue?

THE WITNESS: Yes.

THE COURT: Go ahead.

THE WITNESS: In '64 I was working with Wearing Apparel. In '64 we opened up Eiffel Classics.

Q In other words, Mr. Tramunti, you now can remember what you were doing in 1964. Is that correct?

A Right.

Q But when you went before the grand jury in 1966 you had a lapse of memory. Is that correct?

MR. GOLDBERG: Object to the repetitious nature of the questions.

THE COURT: He's already testified on two occasions about that. Sustained.

Q How, Mr. Tramunti, can you tell us some of the jobs that you had over the years?

MR. GOLDBERG: I object to this as being remote.

THE COURT: Sustained.

Q Can you tell us what other jobs you had since 1960?

MR. GOLDBERG: This is 13 years, if your Honor please. I object as remote.

THE COURT: Frankly, I think ten years is a fair

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area for inquiry.

MR. NAFTALIS: May I just pursue it with two more questions, your Honor?

THE COURT: Yes.

Read the question to the witness, please.

We shall not go beyond 1960, Mr. Naftalis.

(Question read)

A I don't remember, sir, unless you refresh my memory.

Q By the way, when you were questioned before the grand jury in 1966 you were asked these questions -- do you remember being asked these questions and giving these answers:

"Q Anything else that you can remember you did for a living?

"A I did a lot of things. I don't remember now, Mr. Tendy, believe me.

"Q Give me some of them.

"Q I don't recall, Mr. Tendy, believe me."

MR. GOLDBERG: I object to this, your Honor. Since he may not put these questions on this trial, then he can't get it in through indirection by reading from a transcript which may deal with matters far beyond ten years. In other words, I may be able to make my objection perhaps more understandable at the side bar, but the point is if your Honor has set a ten or thirteen-year limit, he can't by indirection

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in reading the Tendy transcript bring --

THE COURT: I agree with that. If I've limited it to 13 years, then the back door is not open. Any back door is not open.

MR. NAFTALIS: Let me start again.

"Q Anything else that you can remember that you've done for a living?"

MR. GOLDBERG: I object to that. There is no time limit.

THE COURT: Ladies and gentlemen, it is time for the morning recess. Ten minutes, please.

(Jury excused)

THE COURT: You may step down, Mr. Tramunti.

(Witness excused)

MR. GOLDBERG: I want to make my position clear.

THE COURT: You have made it clear. Just tell me specifically what you want to say now.

MR. GOLDBERG: I claim on these matters which are collateral that he is bound by the witness' answer. If he is bound by the witness' answer, he may not use or resort to extrinsic proof. Then the tactic or approach used here in reading from a transcript in front of this jury suggests to this jury the existence of extrinsic proof.

THE COURT: I agree with your basic premise. The

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rule you announce applies mostly in the state courts where a person is allowed to ask about any illegal or immoral act as bearing upon credibility, and that rule is that you are bound by the answer is you do so. We have not had that going on here. He is allowed, in my discretion, to inquire back into the background of any witness, as you have done on every witness you cross-examined. I have fixed what in my discretion I deem to be a reasonable period of time. As long as he inquires within that. If the witness answers falsely or differently from the manner in which he has previously answered, quite obviously the United States Attorney is not required to stand with his hand behind his back and is not bound by the answer given on the stand.

The rule you talk about does not apply to this situation. But in any event, you have made the record and if I'm wrong, and the Court of Appeals has a chance, then they will rule.

Anything else?

MR. GOLDBERG: I have nothing further, your Honor.

THE COURT: Then, gentlemen, ten minutes.

(Recess)

THE COURT: Proceed, Mr. Naftalis.

BY MR. NAFTALIS:

Q Mr. Tramunti, before we broke for the recess I

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started to ask you whether or not you recall testifying before the federal grand jury on December 1, 1966, and being asked these questions and giving these answers:

"Q Anything else that you can remember you've done for a living?

"A I did a lot of things. Don't remember now" --

MR. GOLDBERG: May I object?

THE COURT: I think all he wants to do is get an answer as to was he asked those questions.

MR. GOLDBERG: Since there is no limit how far back in time, I submit it is the back door we have been talking about.

b3 THE COURT: I'll permit it.

Q Do you recall when you were testifying, do you recall being asked these questions when you testified before the federal grand jury under oath on December 1, 1966:

"Q Anything else you can remember that you've done for a living?

"A I did a lot of things. I don't remember now, Mr. Tendy, believe me.

"Q Well, give me some of them.

"A I don't recall, Mr. Tendy. Believe me.

"Q How old did you say you were, 57?

"A Beg pardon?

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"Q How old are you?

"A 57.

"Q You can't remember the things that you've done for a living over the years" --

THE COURT: That's enough now.

Were you asked those questions and did you make those answers?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Mr. Tramunti, you are familiar with a bar called the Pussycat, aren't you?

A Yes, sir.

Q And you have been there quite often, haven't you?

A Yes, sir.

Q Well, let's restrict ourselves to the past -- you know, over the years. You have been in there five nights a week, haven't you?

A Yes, sir.

Q And you have been in there, haven't you, with Mr. John Dioguardi a lot?

A I saw him in there.

Q And Mr. Dioguardi is an old friend of yours, isn't he?

A Yes, sir.

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Q You have known him for how long?

A Many years.

MR. GOLDBERG: Your Honor, I have to ask your Honor for a side bar conference on this and it won't be without justification, I can assure you.

THE COURT: Well, do you object or don't you object? Do you move to strike, do you not move to strike, or is this a simple declaratory sentence?

MR. GOLDBERG: It's a declaratory sentence that has a strong basis.

MR. NAFTALIS: He is either objecting or not. He shouldn't be making speeches.

MR. GOLDBERG: I haven't made a speech. I said I press for a side bar conference.

THE COURT: I take it then you have no objection to the questions and answers as they appear?

MR. GOLDBERG: I have an objection to the question that's put to him.

THE COURT: Strike the last question and answer. Go ahead.

BY MR. NAFTALIS:

Q You know Mr. Dioguardi for a long time. Is that correct?

THE COURT: That's just what I sustained the objection

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to. Proceed.

Q Mr. Dioguardi has been a friend of yours?

MR. GOLDBERG: I object to this. Three times on the same subject, your Honor.

THE COURT: Sustained. Go ahead.

MR. NAFTALIS: Your Honor, might the government be heard on this?

THE COURT: Go ahead.

Q You indicated that you have been in the Pussycat a number of times with Mr. Dioguardi?

MR. GOLDBERG: I object.

THE COURT: I will permit that.

Q Is that correct?

A I've been in the Pussycat.

Q Lots of times?

A Lots of times.

Q And you have been in other places with Mr. Dioguardi, haven't you?

A Yes.

Q And restaurants, right?

A Yes, sir.

Q I think you have been in Gatsby's with him, haven't you?

A No, sir.

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Q Never been in Gatsby's at any time with Mr. Dioguardi?

A Yes, I've been in Gatsby's, I've been in Gatsby's.

Q With Mr. Dioguardi ever?

A I saw him there.

Q Ever been in the Copacabana with Mr. Dioguardi?

A I saw Mr. Dioguardi in the Copacabana.

Q And you knew that Mr. Dioguardi had an office called Jard Products? Isn't that right?

A I heard of it.

Q And that was his firm. Is that correct?

I mean that was his business, his business?

A That's what I heard.

Q And he had that business for a number of years. Isn't that correct?

A I don't know how many years he had it. I don't know.

Q All through the '60s?

A I can't answer you. I don't know.

Q And obviously since you knew him and --

MR. GOLDBERG: I object to the form of the question, "obviously since you."

THE COURT: Sustained.

Q You have testified that you have known him and been in places with him including the Pussycat. Is that

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correct?

A Yes, sir.

Q And you have indicated, have you not, as a result of your knowing Mr. Dioguardi and being in public with him you have learned what his occupation was. Is that correct?

MR. GOLDBERG: I object to that.

MR. NAFTALIS: I'm leading up to something.

MR. GOLDBERG: That's not the testimony, as a result of. The form of the question I object to.

MR. NAFTALIS: I wish I could put a question to the witness without Mr. Goldberg jumping up to suggest an answer to the witness.

THE COURT: He has been objecting to it because he did not testify that it was as a result of that. I sustain the objection.

MR. GOLDBERG: May his comment that I ever suggest an answer to any witness be stricken?

THE COURT: Just one minute. I order both of you to stop these exchanges between yourselves and address any remarks either of you have to the court. That, as we used to say in the Navy, is an order.

THE COURT: Go ahead.

MR. NAFTALIS: Yes, sir.

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Q And is it not a fact, Mr. Tramunti, that as a result of your knowing Mr. Dioguardi and being with him socially you learned what he did for a living. Isn't that correct?

A Well, the only thing I knew about was Jard "roducts".

Q And you knew, restricting ourselves to the period from 1960 to the present, you have known him during that period of time, haven't you?

MR. GOLDBERG: I object, your Honor, because on this particular subject you have ruled three times already.

THE COURT: Well, I'll see you at the side bar.

(At the side bar)

THE COURT: Where do you think you are going, Mr. Naftalis, because if all you want to do is tie the witness' name to Dioguardi, you have come to the end of that.

MR. NAFTALIS: What I'm trying to do is elicit from the witness--

THE COURT: What do you want to do?

MR. NAFTALIS: He indicated he knows Mr. Dioguardi well. I'm trying to establish --

THE COURT: You have already established that.

MR. NAFTALIS: -- that he knows what he does for a living. Now I intend to confront him what he

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testified before the grand jury he said he didn't know Mr. Dioguardi.

THE COURT: Well, do that.

MR. NAFTALIS: Thank you.

(In open court)

MR. NAFTALIS: Let me just tell Mr. Goldberg something.

(Discussion off the record.)

Q Mr. Tramunti, do you recall being questioned before a federal grand jury on December 2, 1966, sir?

A Yes, sir.

Q And you were sworn to tell the truth?

A Yes, sir.

Q You took an oath?

A Yes, sir.

Q And do you recall being asked these questions and giving these answers:

"Q What does Mr. John Dioguardi do for a living?

"A Oh, I don't know what he does for a living" --

MR. GOLDBERG: I object to the way he reads it. He doesn't do it in a monotone. He tries to import something.

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THE COURT: All right, all right. Read it a little more monotonously.

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MR. NAFTALIS: Yes, sir.

Q Do you recall being asked these questions and giving these answers under oath when you testified before a federal grand jury:

"Q What does he do for a living?

"A Oh, I don't know what he does for a living.

"Q You don't know?

"A No."

Do you recall being asked those questions and giving those answers?

A If it's down there, that's the answer I gave.

Q You will take the representation that the transcript is accurate?

A Yes.

Q Now, Mr. Tramunti, I think you have indicated you have been in the Pussycat five nights a week or something like that. Is that correct?

A Well, I wouldn't say five nights a week. Sometimes three times a week, sometimes once a week. Sometimes I didn't go at all.

Q And you would go there and spend a lot of time there. is that correct?

A Yes.

Q You would stay until 3, 4 in the morning?

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A Sometimes.

Q And when you have seen Mr. Dioguardi in the Pussycat, Mr. Tramunti, have you ever seen him with other people?

A Yes.

Q And when he has come over and had a drink with you at the Pussycat --

MR. GOLDBERG: I object to that question. There is no foundation laid, when he comes over and has a drink with you.

THE COURT: Put the first question first.

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Q You testified youhave been with Mr. Tramunti and Mr. Dioguardi in the Pussycat?

A Yes, sir.

Q You have had drinks with him in the Pussycat?

A Yes, sir.

Q Haven't there been times, Mr. Tramunti, when Mr. Dioguardi comes over and has a drink with you or go over and have a drink with Mr. Dioguardi in the Pussycat and that other people are with him?

A Sometimes, yes.

Q Some of these people you may not have known until you saw them with Mr. Dioguardi, isn't that right?

A Yes.

Q And isn't it fair and honest to say that you go over there or he would go over to your table, whatever the case might be, and he introduced you to the people, isn't that right?

A No, sir.

Q He would let the people sit there and would never tell you their names?

A I never sat at the table. I would say "Hello, Johnny" and he would say "Hello, Carmine." I would send a drink to John and he would buy me a drink.

Q You would send him a drink to his table?

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A That is right.

Q And he would send a bottle or a drink to your table?

A A drink, not a bottle.

Q You never moved from one table to the other table? Is that your testimony? Never at any time did you and Mr. Dioguardi ever sit down at the same table in the Pussy Cat and drink together?

A Oh, no, we drank together at the same table.

Q During the times when you and Mr. John Dioguardi would drink together at the same table, isn't it correct that sometimes there would be other people there with Mr. Dioguardi who you didn't know before?

A Yes, but I would never go to the table.

Q You would keep away?

A That is right.

Q Was Mr. Dioguardi ever presumptuous enough to come to your table with people you didn't know?

MR. GOLDBERG: I move to strike it out.

THE COURT: Strike it out.

Q Would Mr. Dioguardi ever come to your table with people whom you didn't know?

A He came over to say hello to me and all that.

Q Would he introduce you to those people when he

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would bring them over?

A No.

Q You didn't want to meet any of them?

A No.

Q You went to the Americana Hotel, you say, in 1969 to see Engelbert Humperdinck?

A Are you through with the question?

Q Yes.

A Yes, sir.

Q How many times did you go in 1969 to see h im?

A Maybe twice.

Q One of them was the opening night, wasn't it?

A Yes, sir.

Q And you were seated at ringside, weren't you?

A I wouldn't call it ringside where I was seated.

Q While you were at the Americana Hotel you were with people, weren't you?

A No, sir.

Q All by yourself?

A I didn't say that.

Q Who were you with?

A One person.

Q Who was that?

A A lady friend.

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Q A girl friend?

A Yes, sir.

Q During the time that you and your girl friend were at the Americana did you talk to anybody?

A No, sir.

Q Did you meet anybody?

A No, sir.

Q Nothing happened?

A No, sir.

Q You just watched the show?

A I just gave her my time.

Q And no one, neither Mr. Hellerman or Mr. Dioguardi, sent a drink over to your table that night?

A Nobody sent me a drink.

Q By the way, has Mr. Dioguardi ever sent a drink to you in the Americana to your table at any other place like he does at the Pussy Cat?

A I never saw him at the Americana.

MR. NAFTALIS: Bear with me for a moment, your Honor.

THE COURT: Yes.

Q When you testified at the Vincent Aloi trial, Mr. Tramunti, do you recall whether or not you mentioned it was the opening night then?

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MR. GOLDBERG: I object to the form of the question.

THE COURT: Overruled.

THE WITNESS: Repeat that again.

MR. GOLDBERG: May I state the ground of my objection?

THE COURT: Yes.

MR. GOLDBERG: There is no proof he was asked.

MR. NAFTALIS: He can bring out anything on redirect.

THE COURT: Ask him if he was asked that question first, please.

MR. NAFTALIS: Why don't I read him the questions and answers he was asked, your Honor.

MR. GOLDBERG: Is the last question withdrawn, your Honor?

THE COURT: I assume so.

Q I think you testified here that you went to the opening night of Engelbert Humperdinck in 1969 at the Americana?

A Yes.

Q Do you remember when you were questioned at the trial in 1971, the one that you testified as a witness at, the case against Mr. Aloi and the other people?

A Yes.

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Q You were asked, weren't you, these questions and you gave these answers:

"Q Did you go to the Americana at the show where Engelbert Humperdinck was playing?

"A Maybe yes, and maybe no.

"Q Well, what is it?

"A When?

"Q Did you ever go tothe Americana to see a show?

"A Yes, I went to the Americana a lot of times.

"Q Have you ever seen Engelbert Humperdinck at the Americana?

"A Yes, I saw him twice.

"Q When?

"A 1969 and 1970.

"Q When in 1969?

"A I don't know. I don't know what the date was.

"Q Was it November or December?

"A I can't answer you. I don't know the dates."

Is that right?

A Yes, sir.

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Q And you didn't mention anything about that being the opening night, is that correct?

A The what?

Q You didn't mention anything in your testimony in 1971 in your question about it being the opening night, that is all.

MR. GOLDBERG: I object to the form of the question.

THE COURT: The record is clear that nobody asked him specifically if he was there on the opening night. It's equally clear from what you have read that he didn't volunteer it.

Go ahead.

MR. NAFTALIS: Thank you, your Honor.

Q m.r Tramunti, I think you were asked some questions on your examination about whether or not you attended a particular wedding, is that right?

A Yes, sir.

Q Do you remember in 1965, sir, that you attended a wedding at Claridge Caterers in Brooklyn, a wedding for a man named Fusco?

A Yes, sir.

Q And at that wedding at the Claridge Caterers, I think you indicated that there were a number of people,

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is that correct?

A Yes, sir.

Q By the way, when you were asked about the Claridge Caterers in 1971 when you testified at the trial, let me ask you whether you were asked this question and you gave this answer then --

MR. GOLDBERG: What page?

MR. NAFTALIS: 5987.

Q This is in the trial when you testified as a witness:

"Q Have you ever been to the Claridge Caterers, Avenue P in Brooklyn, New York?

"A The name don't strike me.

"Q Wasn't that where the wedding reception was held?

"A I don't know, Mr. Wing.

"Q As far as you know you have never been there?

"A That is right."

Do you recall being asked those questions and making those answers, sir?

A If it's there, yes.

Q Let me show you Government's Exhibit 4, Mr. Tramunti. Kindly look at it for a moment.

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That is a photograph, isn't it, of six people? You can count them if I am wrong.

A Yes, six.

Q Three men and three women?

A Right.

Q You're in that picture, aren't you, Mr. Tramunti, the fellow with the circled 1 over his head?

A Yes.

Q And you know that the other fellow there with the circle over his head, No. 2, that is Vincent Gugliaro, isn't that right?

A That I met in the courtroom.

Q Do you recall that Mr. Conover, the FBI agent, testified that this was a picture of the wedding, the one at Claridge Caterers, of Mr. Fusco's daughter, right?

A Yes.

Q This is a picture of you leading the wedding, isn't that right?

A I am leading the wedding?

Q Yes, sir.

A If it's that, that is what it is then.

Q While you were on your way out of the wedding there did you stop to pass a word with Mr. Gugliaro who was right behind you there going out the door?

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A I didn't know the man at all. I don't know the man at all.

MR. GOLDBERG: Your Honor, I object to the characterization of "right behind you". Mr. Naftalis knows that is inaccurate.

THE COURT: The jury has seen the picture and the jury has it in mind. The jury's recollection will prevail over however it's characterized. You have all seen the picture.

MR. NAFTALIS: Might I pass the picture briefly or refer to it as to where the people are in the picture?

THE COURT: Yes.

Proceed, Mr. Naftalis.

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Q I think you testified in your direct examination, Mr. Tramunti, that you have attended another wedding, which name has come up in this case, isn't that right?

A Yes, sir.

Q That was the wedding of the son of a man by name of Joseph Columbo in March of 1969?

A Yes, sir.

Q That was Joseph, Jr.?

A Yes, sir.

MR. GOLDBERG: Your Honor, most respectfully,

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I think the date is wrong. Isn't it 1967?

MR. NAFTALIS: March of 1969.

MR. GOLDBERG: Then I am in error.

THE COURT: Just a moment. It's up to the jury's recollection, but it's my impression that Mr. Barone testified it was early 1969. However, your recollection controls, ladies and gentlemen.

Q Mr. Tramunti, at that wedding you sat at the same table as Mr. Dioguardi, didn't you?

A No, sir.

Q You sat at different tables?

A I sat at a different table.

Q Who did you sit with?

A My wife, my daughter, my son-in-law. There was another couple, but I don't remember their names.

Q Do you remember the names of any other people?

A No.

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Q You saw Mr. Dioguardi at that wedding?

A I might have.

Q Did you see any other friends of Mr. Dioguardi at that wedding, people who were his friends or hung around with him there?

MR. GOLDBERG: Object to that question.

THE COURT: Sustained.

Q Did you ever see any people at that wedding you knew to be friends of Mr. Dioguardi, whether or not you knew their names?

A Yes.

Q I want to go back to the Pussy Cat just for a minute, Mr. Tramunti.

You knew Mr. Bozzi, who testified here?

A Yes, sir.

Q He has been a friend of yours?

A Yes.

Q Gone places with him, done things with him?

A I didn't do anything with him.

Q You recall, do you not, that some times you would use a table, special table, in the Pussy Cat, the one that was on the terrace?

A I sat at many tables at the Pussy Cat.

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Q Ever remember sitting at any special table on the terrace?

A There is no special table in the Pussy Cat. Anybody could sit there.

Q Do you ever remember sitting at any particular table on the terrace at the Pussy Cat?

A You call it a terrace; I say yes, all right. Let's call it a step-up.

Q There is no question you were there on a number of occasions?

A Yes, I was there. I am not denying it.

Q I take it there is no question you saw the baseball player there, the one that used to play for the Yankees a few years ago, Joe Pepitone?

A I saw a lot of sport fellows.

Q You said hello to them?

A A lot of them.

MR. NAFTALIS: Your Honor, might I just have one minute?

THE COURT: Yes.

(Pause.)

Q Going back to that wedding again, you knew Mr. Barone, didn't you, Joseph Barone, the fellow who testified yesterday?

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A Yes, I saw him at a lot of places.

Q You remember him being at that wedding, don't you?

A Yes, sir.

Q And his wife?

A Yes, sir.

Q Mr. Tramunti, you remember Mr. Hellerman, who testified in this trial?

A Yes, sir.

Q And I want to direct your attention to the Aloi trial back in 1971. You remember that?

A Yes, sir.

Q Do you remember the day when Mr. Hellerman was subpoenaed to come down as a witness by the defense in that case?

A Yes, sir.

Q You remember he took the stand, took the Fifth Amendment, didn't testify?

A Yes, sir.

Q And you were in the Court House that day, weren't you?

A Yes, sir.

Q The entire day?

A Yes, sir.

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Q What time did you get there, do you remember?

A Well, the courtroom used to be opened up at 10 o'clock. You had to be there for 10.

Q Who did you come down with that day, or did you come by yourself? Did you drive by yourself, take a bus, someone give you a lift? How did you get to the Court House that day?

A I used to come by subway. That was the best way to get down here.

Q You came by yourself on the subway?

A Yes, sir.

Q And then you came into the building?

A Yes, sir.

Q Like everybody else does who gets off the subway, they walk up, right?

A Yes, sir.

Q Were you in the building the entire day?

A I had to be.

Q I don't want to get into why you had to be or didn't have to be, but were you in the building the entire day?

A Yes.

Q What time, to the best of your recollection, did

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you leave the building?

A Well, when the courtroom was closed, we'll say.

Q Thawt was what, 4.30, 5 o'clock? Late in the day?

A I could say 4.30, 5 o'clock, sometimes after five.

THE COURT: All right. Okay.

A Some time after five.

Q Where did you eat lunch that particular day, do you remember?

A There is only one place I went all the time --

Q I don't want to know anything about all the time. I just want that particular day.

A I went to one place every day.

THE COURT: All right, what place was it?

THE WITNESS: The one up the street there. I think it started with a G.

Q It was Gasner's Restaurant?

A Right, where the heavy wife and --

THE COURT: That's Gasner's.

Q Who did you have lunch with that day?

A Mr. Greenberg.

Q Just you and Mr. Greenberg?

A No, sometimes other people sat at our table.

THE COURT: He is talking only about the day

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that Hellerman testified or Hellerman was in the courtroom.

Is that correct?

MR. NAFTALIS: Yes, your Honor.

THE COURT: Just try to direct your attention to that one day. That is all he is talking about.

Put the question again.

Q Do you remember who, if anybody else, you had lunch with besides Mr. Greenberg and yourself that day?

A I don't remember, sir, now.

Q There might have been other people, there might not have been?

A Right.

Q When you left the Court House at the end of that day did you leave by yourself or did you leave with somebody else?

A You mean the end of the courtroom day?

Q The end of the courtroom day.

A The end of the courtroom day, I used to leave with Mr. Greenberg --

Q That one day.

THE COURT: Mr. Tramunti, he is trying to direct your attention to that day when Mr. Hellerman was in the courtroom.

THE WITNESS: I don't remember the day-- I

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remember the day he was in here.

THE COURT: Do you remember that day?

THE WITNESS: Yes, sir.

THE COURT: Do you remember on that particular day whether you left the Court House -- Court House?

MR. NAFTALIS: Yes, your Honor.

THE COURT: -- with Mr. Greenberg? Do you remember that day?

THE WITNESS: No, I can't answer that question. I don't remember.

THE COURT: All right.

Q Do you have any recollection that day whether or not there were recesses taken during the course of that day, you know, Court stops to have a recess, you know, to give the jury a chance to stretch?

Do you remember anything like that?

A Yes, every day is a recess.

Q Do you remember how many?

A Sometimes we used to have two --

Q Just that day.

A I don't remember the day. I don't remember the day. I don't remember what day you are talking about.

Q Is it fair and honest to say, in words or

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substance, you have no specific recollection of how many recesses there were that particular day?

A No, I haven't, no.

Q Or whether there even were any?

A Right.

Q Do you remember on that particular day whether or not you ever left to go to the men's room, or anything like that?

A Yes.

Q And you went whenever you had to go?

A Right.

Q And that really wouldn't depend on whether anybody else had to go to the men's room or didn't have to go to the men's room?

A That's right.

Q Do you smoke, sir?

A Yes, sir.

Q Do you recall on that particular day ever going out to have a smoke, smoke a cigarette?

A During recess.

Q And that would be, you know, in the normal course, because you can't smoke in a courtroom, that is not permitted, and you would go out and smoke whenever you are allowed to?

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A Right, just like here.

Q And sometimes there may come a time when you run out of cigarettes and you have to go out and buy them? That happens in your life, doesn't it --

MR. GOLDBERG: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall whether or not on that particular day you had to go out and buy cigarettes?

A No, sir.

Q You don't remember, one way or the other?

A I don't.

Q But you remember when Mr. Hellerman came out there he was out in the hall? You remember that?

A What?

Q You remember when Mr. Hellerman came down that particular day he stood out in the hall before he went into the courtroom?

A Yes, sir.

Q And there is a hallway right in front of that courtroom?

A A very long hallway.

Q What is it, about 20 feet long from the end of the courtroom to the end of that wall?

A I think it is a little more.

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THE COURT: So do I.

Q How much would you say, sir? What is your best estimate as to how long it is?

A I can't give you that. I am not a surveyor.

Q He was standing somewhere in that hall?

A He might have been.

Q Well, was he or wasn't he?

A You are talking about this particular day again?

Q Yes, sir, that is all we have been talking about.

A I would say yes.

Q And you were standing out in the hallway, weren't you, during the time he was there?

A I would say yes.

Q And he was on one side of the hallway and you were on the other side of the hallway?

A Well, I could have been at the end of the hallway too. I don't have to be directly across.

Q Isn't it true, fair and honest to say that he was on one side of the hallway and you were on the other, Mr. Tramunti?

A No, sir.

Q Isn't that honest?

A No, sir, I wouldn't say that. I could have been a long way from there.

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Q But you don't remember, do you?

A No.

Q And you remember, and I don't want you to get into any of the details of what anybody said, or anything, but there was a lot of chatter in the hallway about the fact that Mr. Hellerman was there that particular day, wasn't there?

A I know all the defendants were talking about it, "Hellerman is here," and the attorneys.

THE COURT: I am going to ask the jury to step out for just a moment.

Please forgive me, but I will have to ask you to step out for just a moment.

(Jury leaves courtroom.)

THE COURT: Mr. Tramunti, everybody around here, your lawyer, Mr. Naftalis, and I are trying to keep from this jury the fact that you were a defendant in this case. That is why we are limiting conversation to this day, so that they won't get the impression that you were a defendant. That is why I am limiting your answers in this way and that is why when you start to say all the defendants did this, that and the other, I want to caution you that everybody is trying to eliminate that from the case so that there isn't any problem about it.

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Is that clear?

THE WITNESS: Yes, your Honor.

THE COURT: How much longer are you going to be?

MR. NAFTALIS: Your Honor, I am not entirely sure.

THE COURT: Well, I am going to sit until you finish, because I want the summations and charge to be this afternoon.

MR. NAFTALIS: If I could, with your Honor's indulgence, have a very brief recess to get a glass of water and consult with Mr. Rakoff and Mr. Passaretti, it would probably save time and I would probably be able to discard some bad ideas and maybe get a good one or two.

THE COURT: Five minutes.

(Recess.)

(In the robing room.)

MR. GOLDBERG: Your Honor, I have asked for a conference only because I understand -- I have not seen it, but some spectators reported to me -- that there is a long writeup with respect to this defendant in The New York Times this morning.

THE COURT: I have not had a chance to read The Times this morning, so I don't know.

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MR. NAFTALIS: I must say because of the summations I have not read The Times, other than the headline about the tapes.

MR. GOLDBERG: Might I, before the jury is excused, or even now during the recess, go out to the spectator, and they usually clip them out and keep tabs on these things, and see if I can dig up this article?

THE COURT: Yes. I can't imagine how that reporter has not been here all during the trial.

(Mr. Goldberg leaves robing room.)

MR. NAFTALIS: Your Honor, we may have two very short rebuttal witnesses. It would be Mr. Wing and Mr. Lowe.

THE COURT: What makes you think they are going to be short?

MR. NAFTALIS: Well, it will be short for me.

THE COURT: Well, what makes you think they are going to be short and what would they have to testify to -- well, let's wait for Mr. Goldberg to get back.

(Pause.)

(Mr. Goldberg returns to the robing room.)

MR. GOLDBERG: Your Honor, I don't find it here --

THE COURT: But you have all luncheon recess to

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look for it.

MR. GOLDBERG: If it is so terribly prejudicial, I thought your Honor might want to do something before the recess, but I don't see anything in the paper.

THE COURT: You said you were thinking of calling Mr. Wing and Mr. Lowe?

MR. NAFTALIS: As rebuttal witnesses.

THE COURT: For what?

MR. NAFTALIS: Mr. Goldberg called both Mr. Mitchell and Mr. Greenberg, in part, to testify to the circumstances of the Constance Kelsey identification, which is probably the most important thing in this case, which I am sure your Honor is going to tell me, and I just really would like Mr. Wing and Mr. Lowe to testify to that, because their honest recollections, which I am willing to take, are quite a bit different than the recollections of the two lawyers who testified here and, basically, and I will make the full offer of proof here and then Mr. Goldberg can make all his objections --

THE COURT: Certainly, so far I have not heard anything that is objectionable.

MR. NAFTALIS: Their direct testimony would simply be, "Were you involved in this case, such-and-such, on a particular date that Mrs. Kelsey testified? Did

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there come a time when she was asked to make an identification, what happened, and did Mr. Tramunti put on his glasses," which Mr. Goldberg has made a major bone of his defense.

THE COURT: I see nothing objectionable in that.

MR. NAFTALIS: That will be the direct, all of two or three minutes.

MR. GOLDBERG: The question of taking the glasses on and off, I believe, was raised by the prosecutor on redirect. Be that as it may --

THE COURT: No, no. As a matter of fact, the very first mention ofthe glasses, and I think the record ought to reflect this, was when, I believe, Mrs. Kelsey made some reference to glasses, whereupon, and I think the record should reflect that, as soon as Mrs. Kelsey said something about glasses, Mr. Tramunti put his glasses on.

Now, I noticed that and the occasion did not arise for me to mention it before now, but I think that the matter of glasses was injected by Mrs. Kelsey, is my recollection of the matter. Certainly in your examination you did allude to glasses, and I will permit them to do this.

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MR. GOLDBERG: Your Honor, I have spoken to Jerry Lewis, and he was present at the identification, all ten lawyers I offered to bring into this Courthouse.

I spoke to Gustave Newman and, unfortunately, he is on trial in Brooklyn, but all the lawyers would come in to say, including Bob Mitchell, who has no motive to fabricate -- if Mr. Lowe and Mr. Wing testify, I offer to develop their motive in their testimony today in that they were dissatisfied with the acquittal of this defendant. I say when Mr. Wing and Mr. Lowe are produced in the trial of this case, I don't accept any representation from them without conducting my own inquiry that they are free from any motive, any hostility to this defendant as a result of his acquittal in that case.

THE COURT: I think the Government should have in mind that that would normally be an appropriate question, questions going to motive would be a perfectly legitimate area of cross-examination of these people. It comes down to this question, "Aren't you mad because Tramunti got acquitted?"

I see that as a proper kind of cross-examination.

MR. NAFTALIS: I guess there won't be any rebuttal.

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Your Honor, when I asked for the brief recess, to have a few minutes to see --

THE COURT: Take your few minutes and let's get the show on the road and let me know quickly when you are ready.

MR. NAFTALIS: Yes, your Honor.

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jqh 1 Tramunti-cross
redirect

T7 (In open court-jury present.)

MR. NAFTALIS: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Tramunti, yesterday your former attorney, Mr. Greenberg, testified, isn't that right?

A Yes, sir.

Q In addition, Mr. Mitchell who is one of the lawyers who was involved in some way in the Aloi trial?

A Yes, sir.

Q Isn't it a fact, sir, that you personally went to Mr. Mitchell yesterday and you talked to him about being a witness in this case?

A Yes, sir.

Q Isn't it a fact, sir, that in 1971 you personally spoke to Michael Hellerman in this courthouse about being a witness in a pending trial?

A I never did, sir.

MR. NAFTALIS: Nothing else.

REDIRECT EXAMINATION

BY MR. GOLDBERG:

Q Did you speak to Mr. Mitchell yesterday?

A Yes, sir.

Q You spoke to Mr. Mitchell in the company of your present attorney?

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A Yes, sir.

Q Didn't you tell Mr. Mitchell that you wanted the truth?

A Yes, sir.

Q Did you offer him anything?

A No, sir.

Q Promise him anything?

A No, sir.

Q Suggest anything to him?

A No, sir.

Q Mr. Naftalis asked you whether when you were questioned in 1966 you knew what John Dioguardi did then in 1966, do you recall that?

A Yes, sir.

Q Then he asked you or referred you to your estimony in 1971 where you said as a witness that you knew that John Dioguardi was a principal in Jard, do you recall that?

MR. NAFTALIS: I didn't refer to his testimony in 1971. I asked him on the stand if he knew what Dioguardi did for a living and he said he worked at Jard.

MR. GOLDBERG: I will accept his representation.

THE COURT: For better or worse, it's my recollection as well.

Go ahead.

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Q You were asked by Mr. Naftalis on cross whether you knew what John Dioguardi did for a living and you said to him in words or substance that he was a principal or an owner of Jard Products, is that right?

A Yes, sir.

Q Do you recall Mr. Naftalis asking you about your testimony in 1966 when you were asked whether you knew in 1966 what John Dioguardi did for a living and you said you didn't know?

A I didn't know.

Q Am I correct that in 1966 you didn't know what he did for a living?

A That is right.

Q But between 1966 and your testimony in 1971 you learned about his being a principal in Jard Products?

A Yes, sir.

Q Do you know how long he has been a principal in Jard Products?

A No, sir.

Q Or how long Jard Products has been in formation?

A No, sir.

Q Or whether it was even in existence in 1966?

A I don't know, sir.

Q You don't know either way?

A No, sir.

Q You were asked about people in a hallway on the day that Michael Hellerman came to court in the trial of United States v. Aloi, do you recall that subject on cross-examination?

A Yes, sir.

Q And you said, I believe, that you were in the hall at the same time Michael Hellerman was in the hall, isn't that right?

A Yes, sir.

Q Tell the jury how many other people, to the best of your recollection, were present in that hall at the same time?

A A lot of people.

Q Was this during a recess?

A Yes, sir.

Q Would a number in excess of 30 --

MR. NAFTALIS: Objection. He doesn't have to lead. The witness can answer the questions. It's his own witness.

THE COURT: Sustained.

Q Can you give us your best estimate of how many people were in that long hallway?

A I would say 30, 35.

Q Did you ever speak to Michael Hellerman then

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or before or about being a witness in any case?

A No, sir.

Q You were asked about a wedding that you attended in 1965 and you were shown a picture. May I have that exhibit please.

I show you Exhibit 4, Government Exhibit 4. That is a picture of some eight years ago, is that correct?

A Yes, sir.

Q When you left that wedding was that at a time when the wedding was breaking up and all people were leaving?

A Yes, sir.

Q Did you know the names of all of the people who were leaving the wedding with you?

A No, sir.

Q Who had left before you or after you?

A No, sir, I didn't know them.

Q I believe you testified that there were several hundred people at this wedding?

A Yes, sir.

Q Did you leave with this man?

A No, sir.

Q Did you talk to this man?

A No, sir.

Q Did you gowith this man?

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A No, sir.

Q Did you come with this man?

A No, sir.

Q You were asked whether you testified in 1971, I think, that you recall being at the Claridge Caterers and, I believe, you responded in 1971 that the name didn't mean anything to you, is that correct?

A That is right.

Q You went to the wedding of Mr. Fusco, is that right?

A Yes.

Q Do you see the picture?

A Yes, sir.

Q But do yo recall the names of all the catering halls where you have attended weddings since 1965?

A No, sir.

MR. NAFTALIS: Objection.

THE COURT: I will permit it.

A No, sir.

MR. GOLDBERG: I have no further questions.

THE COURT: Anything else, Mr. Naftalis?

MR. NAFTALIS: Yes, your Honor.

RECROSS EXAMINATION

BY MR. NAFTALIS:

Q When you were asked on direct examination in this

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trial, Mr. Tramunti, if you attended that wedding at the Claridge Caterers you said you did, isn't that correct?

A Yes.

Q And you were questioned about it in 1971 you said you didn't know anything about it, isn't that right, sir?

MR. GOLDBERG: I object. He didn't know anything about "it", what, the wedding or the caterers?

MR. NAFTALIS: Well --

THE COURT: Confront him with the question.

Q When you were questioned two years ago, two years closer to the events, you were asked these questions and you gave these answers:

"Q Have you ever been to the Claridge Caterers, Avenue P, Brooklyn, New York?

"A The name don't strike me.

"Q Wasn't that where the wedding reception was held?

"A I don't know, Mr. Wing.

"Q As far as you know you have never been there?

"A That is right."

THE COURT: The question is were you asked those questions and did you make those answers?

THE WITNESS: Yes.

THE COURT: And you made those answers?

THE WITNESS: Yes.

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Q You testified under oath where you were sworn to tell the truth before a grand jury in December of 1966, isn't that correct?

A Yes, sir.

Q It's been established that you testified at that time that you didn't know Mr. John Dioguardi's occupation, isn't that right?

A I might have said that.

Q You were asked this question and you gave this answer:

"Q What does Mr. Dioguardi do for a living?

"A Oh, I don't know what he does for a living.

"Q You don't know?

"A No."

Do you recall being asked those questions and giving those answers?

A Yes.

Q And you told Mr. Goldberg on your redirect examination that it's only since you left the grand jury in 1966 that you became aware of what Mr. Dioguardi did for a living, isn't that right?

A Yes, sir.

Q Isn't it a fact that you used to see Mr. Dioguardi in 1966 once or twice a week and be with him in the Pussycat?

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A Yes, sir.

Q Isn't it a fact, sir, that you knew Mr. Dioguardi for a number of years?

A Yes, sir.

Q Long before 1966?

A Yes, sir.

Q Years and Years and Years?

A I don't know how many years you want to go back.

Q 20, 30 years.

A I would say, yes.

Q And it was only after you left the grand jury in 1966 that you first learned that this man who you knew for 20 or 30 years, you finally found out what he did for a living, is that right?

A Yes.

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MR. NAFTALIS: I have nothing else.

BY MR. GOLDBERG:

Q You are standing trial today with respect to testimony you gave in 1971, do you understand that?

A Yes, sir.

Q In 1971 you were asked, were you not, whether you knew--

MR. NAFTALIS: Will you read exact questions and answers, please.

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MR. GOLDBERG: May I have a moment.

Q You were asked these questions and you gave these answer s, isn't that so, at page 5962:

"Q Did you have any business dealings with him during that period of time?

"A Never had no business with John Dioguardi.

"Q You just happened to run into him?

"A That is all.

"Q Did you ever visit him at his home?

"A No, sir.

"Q Did he ever visit you in your home?

"A No, sir."

Did you make those responses to those questions?

A Yes, sir.

MR. GOLDBERG: May I have a moment, your Honor?

THE COURT: Yes.

Q Do you recall whether you were asked in the trial in 1971 --

MR. NAFTALIS: Objection, your Honor.

MR. GOLDBERG: I must sit down and look through the transcript then, your Honor, if I may.

THE COURT: Yes, of course.

Q Sir,do you recall whether during your testimony in 1971 anyone asked you whether you knew what business John

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Dioguardi was in or what his connection was with Jard Products?

A Mr. Wing might have said that to me.

Q Have you ever been up to Jard Products?

A Never.

MR. GOLDBERG: Might I call for a stipulation, your Honor?

THE COURT: Confer with Mr. Naftalis.

MR. NAFTALIS: I haven't look at it yet. I will be happy to stipulate some time before the summation as to whatever the transcript reflects.

MR. GOLDBERG: All right.

THE COURT: Mr. Naftalis?

MR. NAFTALIS: Just a couple, your Honor.

THE COURT: There are always just a couple, and I point out that couples beget couples.

BY MR. NAFTALIS:

Q Mr. Tramunti, just a couple of questions.

Let's pin down exactly how long you have known Mr. Dioguardi. It's 35 years, isn't it?

MR. GOLDBERG: Objection.

THE COURT: Sustained.

Q Mr. Goldberg read some questions and answers on this subject that were asked of you in 1971. Let me

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ask you if you also asked these questions and answers at page 5963:

"Q Did you ever see Mr. Dioguardi in the old Gatsby's?

"A The old Gatsby's, yes, I saw him in the old Gatsby's.

"Q How often did you go to the old Gatsby's?

"A Maybe twice a week.

"Q How often would you see Mr. Dioguardi in the old Gatsby's?

"A Well, I would say every time I went in I found him there.

"Q Who did you find him with?

"A I don't know who he was with."

I have no further questions.

BY MR. GOLDBERG:

Q Is the old Gatsby's different than the new Gatsby's in location?

A Yes.

MR. GOLDBERG: I have nothing further.

MR. NAFTALIS: Nothing further.

THE COURT: Are you sure?

MR. NAFTALIS: I think so.

THE COURT: You may step down, sir.

(Witness excused)

* * * *

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* * * *

heard, evidence of things I never saw in any of the exhibits. Mr. Goldberg's whole summation, if you recall, was what a bunch of bad guys all of the government witnesses are and he lumped them together like they were one person, instead of three individuals.

Ladies and gentlemen, aside from the fact that that is not fair, that is not accurate.

Mr. Hellerman admitted to being a con man, and he may be a terrible person,but to say that Mr. Hellerman is the same as Mr. Dragani and Mr. Kelsey,not quite true.

Mr. Hellerman made a lot of money, but there is not one piece of evidence in this case that Mr. Kelsey made one red cent from any of these criminal activities and you can bet your bottom dollar that a cross-examiner as skillful as Mr. Goldberg could have elicited that information --

MR. GOLDBERG: I object. That was not permitted.

THE COURT: Overruled.

MR. NAFTALIS: The same thing with Mr. Dragani. You heard Mr. Dragani -- he is a man who admitted he committed crime and he pled guilty to a crime involving a stock called At Your Service Leasing Corporation, and when Mr. Goldberg tried to elicit from him, "Aren't you a con man, Dragani, aren't you this or that?" He said, "No, I am not. I admit what I did was wrong and I never did

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all those terrible things and never did anything else."

Because Mr. Goldberg repeats and repeats and uses a lot of fancy words, con man, swindler, and puts on a nice performance, don't let his act fool you. Concentrate on what the evidence is and what you recollect the facts are because you are the judges of the facts, it is your recollection that controls, not what Mr. Goldberg remembers, not what I remember, not what anybody else remembers.

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Mr. Goldberg told you a few other things. He told you you should reject the testimony of these people because they have a long history of not telling the truth under oath. Well, there is not a single word of testimony in this case that Mr. Hellerman, for example, for whatever bad he may have done, bad that the government brought out on its direct examination of Mr. Hellerman, ever testified falsely. There is not one word of that in this record.

The same thing with Mr. Dragani, who has never been shown to testify falsely before any grand jury or any other prior proceeding, and that is a lot of smokscreen, red herring thrown in your face.

Another thing is, Mr. Goldberg told you, ladies and gentlemen, that you should look at Mr. Tramunti's guilt or innocence as if you yourself were on trial or a loved one were on trial, or something to that effect. Think

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the most to lose if you ladies and gentlemen return a verdict of guilty? Why that gentleman sitting right over there (indicating).

Ladies and gentlemen, that gives him the greatest motive to lie. You saw him testify this morning only a couple of short hours ago, and we will have something to say about his testimony later. Mr. Goldberg didn't make very much reference to his client's testimony. He would like you to forget about it. You remember his testimony, his testimony when he testified before the grand jury in 1966, where he couldn't even remember what his jobs were, or so he said. He couldn't even remember any jobs he had for years. Is that the truth, ladies and gentlemen?

When he went in that grand jury room, that was a grand jury made up of citizens, citizens just like yourselves.

MR. GOLDBERG: I object to this, your Honor. The comment about the grand jury, I object to it.

THE COURT: Overruled. Proceed.

MR. NAFTALIS: They are entitled to the truth as much as you people are, as much as the jury was in 1971 in the Aloi trial, where I suggest the evidence shows overwhelmingly he again violated his oath. He went into that grand jury and lied. He said he didn't remember what his

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job was two years ago, he couldn't remember what his job was three years ago. He couldn't remember any jobs he had over the years. I read those questions and answers and they are a matter of record. There is no controversy that he gave those questions and answers. Those weren't complicated questions. Those were pretty simple questions. After all, it is not a very difficult thing, ladies and gentlemen, if somebody asks you a question, are you married, where do you work, where do you live, where did you work two years ago, or where have you ever worked in your whole life? Those are simple questions. Anyone could answer them. They are not asking you to square a circle or do an Einstein formula or something like that.

Then he went in here, ladies and gentlemen, and I submit to you he continued his course of lying which he began as early as 1966, which he continued in 1971 as a witness for which he is charged with perjury, and he continued in this very courtroom. We will have a little more to say about that later.

Finally, ladies and gentlemen, I have just another smokescreen I want to get rid of. This is this Connie Kelsey business. Mr. Goldberg has made a big production about Connie Kelsey and how her testimony was repudiated by Mr. Mitchell, and all that. Obviously, Mrs. Kelsey is not

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to the truth as you are, telling you the true facts and showing you how he lied.

Think about this, ladies and gentlemen: Mr. Goldberg went through a lot about motive. What is the one thing that Mr. Hellerman and Mr. Kelsey have to worry about? The one thing they really have to worry about is they don't commit perjury. So long as they tell the truth they won't be prosecuted for other crimes they have committed. If they lie on that witness stand they can be prosecuted for perjury as well as other crimes they have committed. Doesn't, ladies and gentlemen, that give them a motive to tell the truth, a motive not to make anything up? The only way they are going to get in trouble is if they take that witness stand and they don't tell the truth. Also remember, they weren't really cross-examined very much about the facts of this case. I think that is another thing to think about. They were really just cross-examined about what kind of bad guys they were. Everybody agrees to that. Mr. Goldberg kept away from the facts with those guys with a ten-foot pole. He didn't want to get into that.

Remember something else, something which is uncontradicted in this record, for which there can be no dispute: Mr. Hellerman and Mr. Kelsey have never discussed their testimony that they gave in this trial in any way,

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like you look at anybody. How you look at someone, whether you want to believe what they told you or you don't want to believe what they told you. Isn't it true when you look at someone you believe him or not based on a number of things? Was he straightforward, did he try and evade things like Mr. Tramunti did when he was asked about what his jobs were or asked about his friend of 20 or 30 years running, Mr. Dioguardi, who says, "I don't even know what he does for a living."Were they straightforward and candid and try to tell the story to the best of their recollection?

Ask yourselves another question, ladies and gentlemen, and I think this is also significant: If Mr. Hellerman and Mr. Kelsey, Mr. Dragani were really trying to lie, really trying to buy Mr. Tramunti, wouldn't they tell you a better story? Wouldn't they embellish their testimony to make Tramunti look worse in your eyes? Take Kelsey, wouldn't Kelsey, if he were making up a story, wouldn't he embellish his testimony to tell you that at Gatsby's Restaurant Tramunti conducted the meeting, issued the instructions, he was in charge, he did all the talking? He didn't tell you that. You remember what Mr. Kelsey said. He said that during this one and a half hour meeting all that Mr. Tramunti did was shake his head a couple of times. Does that sound like someone who is trying to invent some

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Bozzi's testimony that he was there with Mr. Dioguardi a lot of the time, you heard Mr. Bozzi's testimony that Mr. Hellerman was there with Mr. Dioguardi. You heard Bozzi corroborate Hellerman's testimony about the time Joe Pepitone is over there talking to Mr. Tramunti. You heard Bozzi, another disinterested witness who doesn't know what this case is about and there is no argument he has no interest in it or motive to lie.

Remember, Hellerman told you he recalled particular tables that Tramunti would sit at from time to time up on a kind of terrace, or step-up, in the back, and Bozzi said, "Yes, I remember Tramunti would sit at those tables," and we were able to drag it out of Tramunti on cross-examination this morning, but it took a little doing. That is more corroboration and more proof.

Ask yourself how did Hellerman know that Tramunti is in the Pussy Cat with Dioguardi, that he was there with Joe Pepitone, they sat on the raised terrace and so forth? How could he know all this unless he is there in the Pussy Cat at the same time with Mr. Tramunti? Doesn't that make sense to you? Doesn't that appeal to your common sense?

Let's go on to the testimony of Mr. Dragani briefly. Dragani told you there was a meeting in

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Hellerman's office. What was Hellerman's office? Hellerman's office wasn't just some place that had nothing to do with anything in this case. Hellerman testified this was the office of Jard Products, John Dioguardi's office, and he took it over from them and I think he later gave it to a new firm, Stoner Investment, or something like that, but he told you the location of his office was the Jard Products office, which then became Hellerman's office, and was at 28th and Park.

Dragani came in and testified here that he went to a meeting at an office on 28th and Park which Hellerman was using. He didn't say whether it was Jard Products or Stoner, or what, but they were one and the same, and he came In here and said that in the adjoining room there was sitting Mr. Tramunti and he was sitting there with his collar open and Dragani observed him for two and half hours. Isn't that pretty strong corroboration? And I mentioned the fact of the photograph of Mr. Tramunti at the wedding with his collar open, with Mr. Gugliaro, I suggest.

Let me tell you something else: Mr. Dragani is no friend of Mr. Hellerman. At page 409 in the record he was asked, "Are you a friend of Mr. Hellerman?"

"By no means."

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He has not spoken to Hellerman about anything. Mr. Dragani doesn't have the slightest idea of what this case is about, and that is really significant. He doesn't even know Tramunti's name. Dragani did not volunteer to be a witness at this case; he came to this office to speak to another United States Attorney, Mr. Schreiber, about another case, his case, the At-Your-Service case, and while he is there in connection with that case there is a whole bunch of pictures spread on Mr. Schreiber's desk and he is showing him those in connection with that case and one of the pictures is of Tramunti and he says, "I know that man. I saw him at Hellerman's office," and all of a sudden, as he told you, he is subpoenaed. He doesn't know what the case is about. He comes in here and doesn't he supply the icing on the cake? From his testimony alone you could find the defendant guilty of one count of perjury in this indictment, his denial that he knew Michael Hellerman.

Mr. Goldberg told you you shouldn't believe Mr. Dragani, he is awaiting sentence on a plea of guilty, he is attempting to avoid going to jail, but there isn't a shred of evidence he was promised anything in this case. He was testifying because he got a subpoena.

There is only one person who sentences people

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any other time when he was selling shoes to ladies or men or whoever else he was selling shoes to. He is not a man who led a lifetime of crime. That is fancy rhetoric and language Mr. Goldberg threw around very loosely in his summation.

You heard Mr. Kelsey's testimony and it is clear he was a minor participant, he was not a man out conning people on the street; he let himself go used and fof that he deserves no credit, but he was a dupe and became a minor participant in the schemes and, as he admitted on the stand, as he got deeper and deeper into the thing he didn't have the guts to get out.

I suggest to you he was candid about that meeting, his testimony is worthy of belief, and his testimony alone is enough to convict this man in the count of the indictment which charges him with lies about the Gatsby meetings, his lie about not knowing Murray Taylor, his lie about not knowing Mr. Phil Bonodono.

Ask yourself isn't this exactly the kind of meeting that someone would remember? There can be no mistake about this. You don't sit down for an hour and a half with people like Taylor and Kelsey and like people who are stock swindlers and listen to them talk about a stock swindle and forget it easily. Isn't that

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exactly the kind of meeting you would rather forget about when you are asked about it under oath, the kind of meeting that might make it look bad?

"What are you sitting down with those kind of bums for?"

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And doesn't that really supply a reason why Mr. Tramunti would rather not own up to his presence --

MR. GOLDBERG: I object to this, your Honor.

THE COURT: Overruled.

MR. NAFTALIS: Doesn't that supply a motive by Mr. Tramunti to rather not own up to his presence at that meeting and conveniently have his case of amnesia about that on the stand as he did in the grand jury of 1966, that amnesia when it came out what job he had, what do you do for a living.

The final charge, ladies and gentlemen, relates to Mr. Tramunti's false testimony that he didn't know Mr. Gugliaro and the evidence of this, ladies and gentlemen, is simply a picture, a picture of Mr. Tramunti taken by the Federal Bureau of Investigation when they were conducting a surveillance of this wedding.

It shows Mr. Tramunti and Mr. Gugliaro leaving the wedding together. This is Government's Exhibit 4. I suggest to you that the people who leave in this kind of a party are generally together.

That to me, ladies and gentlemen, and I would suggest to you and you may find, is a common sense inference. I suggest to you that if you draw that common sense inference that is enough evidence to convict him of

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the count concerning Vincent Gugliaro.

Ladies and gentlemen, you heard Mr. Tramunti testify in this case. I suggest to you that it was quite a performance. I am not going to go and bring out all the things about his testimony. Your recollection of it is pretty fresh. I don't really believe that it's my function to stand up here and use this podium as a slaughterhouse for somebody's reputation.

However, I must tell you, and I am obliged to tell you, that the testimony he gave in this trial was simply nothing more, nothing less than a continuation of the false --

MR. GOLDBERG: I object to this.

THE COURT: Overruled.

MR. NAFTALIS: Of the false swearing that he conducted in 1971 before another jury of 12 citizens.

Indeed, as we showed on his cross-examination, he had lied as far back to grand juries as in 1966 in this Court House.

Ladies and gentlemen, as I told you, you saw him on the stand. You saw what he was willing to admit. How far he was willing to go.

Just a few comments. One thing I should call to your attention is the fact that another false

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gentlemen, of the kind of story that this man is attempting to tell you.

Just another sidelight before we pass on.

Do you remember his testimony about the Pussy Cat, his friend Mr. John Dioguardi? That is the man he has known for 20 or 30 years but when he was questioned at the grand jury he didn't know what Dioguardi did for a living. He didn't know what he did himself for a living. How could he know what Mr. Dioguardi did? But remember, he said that Mr. Dioguardi and I, we don't really sit at the same table. We sometimes send a drink over which was some kind of a slip which was close to having a bottle sent over.

I asked him on cross-examination "Don't you ever go over to Mr. Dioguardi's table", and he said, "Yes, I do".

"Does he ever go to your table and aren't there times when a friend of Mr. Dioguardi's is there and doesn't he ever or don't you ever go to the table when a friend of Mr. Dioguardi's is there", and he says -- and I think this is typical -- "Oh, no, not me, not in those cases, that wouldn't happen."

Ladies and gentlemen, that I think is another example of dodging in and out, a little broken field running to keep the story straight.

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CHARGE OF THE COURT

(Bauman, J.)

THE COURT: Members of the jury, now that you have heard the evidence and the argument it becomes my duty to give you the instructions of the court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the court and to apply the rules of law so given to the facts as you find them from the evidence in the case. You are not to single out one instruction along as stating the law but must consider the instructions as a whole.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty plea of the accused.

You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court and reach a just verdict regardless of the consequences. Neither are you to be concerned with the wisdom of any rule of law stated

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by the court. Regardless of any opinion you may have as to what the law ought to be it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court. Just as it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything but the evidence in this case. Justice, through trial by jury, must always depend on the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors and to arrive at a verdict by applying the same rules of law as given in the instructions of the court.

It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney the court does not indicate any opinion as to the weight of such evidence. You, the jurors, are the sole judges of the credibility of all the witnesses and the weight of all the evidence. When the court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely

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and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any such question.

During the course of a trial I occasionally ask questions of a witness in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters as to which my questions may have related. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court in arriving at your findings as to the facts.

A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. This presumption of innocence was in his favor at the start of the trial, is in his favor even as I instruct you at this time, and remains in his favor during the course of your deliberations in the jury room.

A defendant, although accused, begins the trial with a clean slate, with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against him.

So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond

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a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden of duty of calling any witnesses or producing any evidence.

As I have said, the law requires that you cannot convict unless you are satisfied of a defendant guilt beyond areasonable doubt.

What is a reasonable doubt? The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. A reasonable doubt is such a doubt as would cause you to hesitate to act in a matter of importance in your own lives. It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experience. Reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. Vague, speculative or imaginary qualms or misgivings are not reasonable doubts. It is not necessary for the government to prove the

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guilt of the defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason is that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by its nature, b3 is not susceptible of mathematical certainty.

In consequence, the law is such that in a criminal case it is enough if a defendant's guilt is established beyond a reasonable doubt and to a moral certainty, not beyond all possible doubt. If after a fair impartial and careful consideration of all the evidence you are convinced of the guilt of the defendant beyond a reasonable doubt you must convict him. If, on the other hand, after a fair, impartial and careful consideration of all the evidence you entertain a reasonable doubt, you must acquit him.

Now, when I review the indictment with you, ladies and gentlemen, I remind you, as I told you at the outset, that the indictment is a charge. It is the way the government brings in to court individuals it claims to have violated the law. But the indictment is not evidence of the guilt of the defendant nor does it detract, in any degree, from the presumption of innocence with which the law surrounds a defendant until you, the jury, are satisfied beyond a

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reasonable doubt of the guilt of a defendant as charged.

The sole function of the indictment is to define the charge against the defendant as to which the evidence at the trial must be addressed.

I want to see counsel at the side bar for a moment.

(At the side bar.)

THE COURT: I forget, Mr. Goldberg, whether you wanted this in or out?

MR. GOLDBERG: I ask that it be left in and you are going to put this in, request 1?

THE COURT: It's undoubtedly typed in.

(In open court.)

THE COURT: As I was saying, the sole function of the indictment is to define the charge against the defendant as to which the evidence at the trial must be addressed. It must be emphasized that the defendant is not on trial for any act or conduct not alleged in the indictment.

Consequently, you are to give no consideration whatever to whether or not the evidence in this case may suggest either directly or indirectly that the defendant may have committed offenses which are not charged in this indictment. Such a belief on your part cannot be permitted

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to influence your decision with respect to the accusations contained in the indictment. There has been repeated mention at this trial of stock of a company known as Imperial Investment Corporation, and reference has been made in the testimony as well as in the indictment, particularly count 6, that the stock of that corporation was or may have been manipulated in violat of the securities laws by Michael Hellerman, Jack Kelsey and Murray Taylor as well as others.

However, there is one thing that I direct you to keep firmly in mind and so I instruct each of you that there is absolutely no evidence, there is no proof either to suggest or permit any inference to be drawn that this defendant Carmine Tramunti, was involved in any way whatsoever either as a participant with or partner or confederate of anyone in any manipulation which may have been practiced in connection with Imperial Investment Corporation stock.

The defendant has pleaded not guilty and in so doing has put in issue every material allegation in the indictment and the government must prove each and every element of the crime charged beyond a reasonable doubt.

The indictment contains six counts, each of which charges the defendant, Carmine Tramunti, with making false declarations under oath in connection with testimony given by him before the United States District Court for the

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Southern District of New York in violation of Title 18, United States Code, Section 1623.

I shall read the indictment to you.

Count 1, "The Grand Jury charges:

1, on or about the 14th day of December, 1971, in the Southern District of New York, Carmine Tramunti, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2, at the time and place aforesaid, said court was conducting the jury trial of a judicial proceeding entitled United States of America v. Vincent Aloi, et al., which involved alleged violations of the federal securities laws.

3, it was material to said trial to ascertain whether the defendant Carmine Tramunti knew of, or had ever met or had ever talked with Michael Hellerman, and what was said in any such meeting or conversation and by whom.

4, at the time and place aforesaid, Carmine Tramunti, the defendant, appearing as a witness before the said court, testified falsely under oath before said court with respect

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to the aforesaid material matter as follows:

"Q Did you know the defendant Michael Hellerman?

"A No, sir.

"Q Have you ever met Mr. Hellerman?

"A No, sir, never met him."

The next group of questions:

"Q Now, is it your testimony that you don't know Michael Hellerman?

"A Yes, sir.

"Q You have never seen Michael Hellerman?

"A I have never seen Michael Hellerman.

"Q Have you ever talked to Michael Hellerman?

"A No, sir, never talked to him.

"Q Did you talk to him last Wednesday?

"A Where?

"Q Did you talk to him last Wednesday?

"A No, sir.

"Q Did you talk to him at any time ever?

"A No, sir, never spoke to Michael Hellerman.

"Q Prior to the indictment in this case did you know who Mike Hellerman was?

"A No, sir, I don't know him."

5, the aforesaid testimony of the defendant Carmine Tramunti as he then and there well knew, was untrue

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in that the defendant Carmine Tramunti knew who Michael Hellerman was and had met and talked with Michael Hellerman on more than one occasion.

Count 2, the Grand Jury further charges:

1, on or about the 14th day of December, 1971, in the Southern District of New York, Carmine Tramunti, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2, at the time and place aforesaid, said court was conducting a jury trial of a judicial proceeding entitled United States of America v. Vincent Aloi, et al., indictment number 70 Cr. 967, which involved alleged violations of the federal securities laws.

3, it was material to said trial to ascertain whether the defendant Carmine Tramunti knew, had ever met or had ever talked with John M. Kelsey, what was said in
b4 any such meeting or conversation and by whom.

4, at the time and place aforesaid, Carmine Tramunti, the defendant, appearing as a witness before said court,

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testified falsely under oath before said court, with respect to the aforesaid material as follows:

"Q Do you know John M. Kelsey?

"A No, sir.

"Q Did you ever meet Mr. Kelsey?

"A Never met him either."

5, the aforesaid testimony of the defendant Carmine Tramunti, as he then and there well knew, was untrue, in that the defendant Carmine Tramunti knew John Kelsey and had met and talked with John Kelsey on more than one occasion.

Count 3, the Grand Jury further charges:

1, on or about the 14th day of December, 1971, in the Southern District of New York, Carmine Tramunti, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2, at the time and place aforesaid, said court was conducting the jury trial of a judicial proceeding entitled United States of America v. Vincent Aloi, et al.,

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indictment 70 Cr. 967, which involved alleged violations of the federal securities laws.

3, it was material to said trial to ascertain whether the defendant Carmine Tramunti knew, had ever met, or had ever talked with Murray Taylor, what was said in any such meeting or conversation and by whom.

4, at the time and place aforesaid, Carmine Tramunti, the defendant, appearing as a witness before said court, testified falsely under oath before said court, with respect to the aforesaid material matter as follows:

"Q Do you know the defendant Murray Taylor?

"A No, sir.

"Q Ever meet Mr. Taylor?

"A Never met him either."

That is one group of questions.

The next group:

"Q You testified, I believe, that you don't know Murray Taylor, is that right?

"A The honest truth, I don't know Murray Taylor.

"Q You never met Murray Taylor?

"A I never met him, never.

"Q And you had never seen him before the indictment in this case?

"A That's right.

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"Q Did you see Taylor in Gatsby's?

"A No, sir."

5, the aforesaid testimony of the defendant Carmine Tramunti, as he then and there well knew, was untrue in that the defendant Carmine Tramunti knew Murray Taylor and had met Murray Taylor on at least one occasion in Gatsby's Restaurant on East 41st Street in New York City.

Count 4, the Grand Jury further charges:

1, on or about the 14th day of December, 1971, in the Southern District of New York, Carmine Tramunti, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York in a case in which a law of the United States authorizes an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2, at the time and place aforesaid, said court was conducting the jury trial of a judicial proceeding entitled United States of America v. Vincent Aloi, et al., indictment number 70 Criminal 967, which involved alleged violations of the federal securities laws.

3, it was material to said trial to ascertain whether the defendant Carmine Tramunti knew, had ever met,

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or had ever talked with Vincent Gugliaro, what was said in any such meeting or conversation and by whom.

4, at the time and place aforesaid, Carmine Tramunti, the defendant, appearing as a witness before said court, testified falsely under oath before said court, with respect to the aforesaid material matter as follows:

"Q Now, do you know the defendant Vincent Gugliaro?

"A No, sir.

"Q When for the first time do you recall having seen him?

"A Who, Gugliaro?

"Q Yes.

"A In this courtroom."

5, the aforesaid testimony of the defendant Carmine Tramunti, as he then and there well knew, was untrue in that the defendant Carmine Tramunti knew and had met Vincent Gugliaron on at least one occasion Gatsby's Restaurant on East 41st Street in New York City.

Count 5, the Grand Jury further charges:

1, on or about the 14th day of December, 1971, in the Southern District of New York, Carmine Tramunti, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the South[illegible] District of New York, in a

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case in which a law of the United States authorized an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

2, at the time and place aforesaid, said court was conducting the jury trial of a judicial proceeding entitled United States of America v. Vincent Aloi, et al., indictment number 70 Criminal 967, which involved alleged violations of the federal securities laws.

3, it was material to said trial to ascertain whether the defendant Carmine Tramunti knew, had ever met, or had ever talked with Philip Bonodono, what was said in any such meeting or conversation and by whom.

4, at the time and place aforesaid, Carmine Tramunti, the defendant, appearing as a witness before said court, testified falsely under oath before said court with respect to the aforesaid material matter as follows:

"Q Do you know the defendant Philip Bonodono?

"A No, sir.

"Q Is it your testimony that you never met Phil Bonodono?

"A Yes, sir, never met him.

"Q You never saw that man?

"A Never met him, just in this courtroom."

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5, the aforesaid testimony of the defendant Carmine Tramunti, as he then and there well knew, was untrue in that the defendant Carmine Tramunti knew and had met Philip Bonodono on at least one occasion in Gatsby's Restaurant on East 41st Street in New York City.

The 6th and last count, the Grand jury further charges:

1, on or about the 14th day of December, 1971, in the Southern District of New York, Carmine Tramunti, the defendant, having duly taken an oath that he would testify truly before a competent tribunal, to wit, the United States District Court for the Southern District of New York, and a case in which a law of the United States authorized an oath to be administered, did unlawfully, wilfully and knowingly, and contrary to said oath, make false material declarations which he knew to be false.

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2, at the time and place aforesaid, said court was conducting the jury trial of a judicial proceeding entitled United States of America v. Vincent Aloi, et al., indictment number 70 Criminal 967, which involved alleged violations of the federal securities laws.

3, it was material to said trial to ascertain whether the defendant Carmine Tramunti attended a meeting in late October or early November, 1969, at Gatsby's

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Restaurant on East 41st Street in New York City at which there was a discussion of a stock manipulation scheme involving Imperial Investment Corporation stock.

4, at the time and place aforesaid, Carmine Tramunti, the defendant, appearing as a witness before said court, testified falsely under oath before said court with respect to the aforesaid material as follows:

"Q Do you know anything about Imperial Investment Corporation?

"A No, sir."

That is the end of the first group of questions.

Next:

"Q There is testimony in this case that some time around the end of October or the first two weeks in November, 1969 that you attended a luncheon meeting at the new Gatsby's Restaurant on East 41st Street at which six other persons attended. Did you ever attend any such luncheon meeting with six other persons at that time, at that restaurant?

"A No, sir."

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T11 The next group:

"Q Apart from the time you and Mr. Greenberg went to Gatsby's and met John Dioguardi, have you ever been there in the fall of 1969 for a luncheon with anybody else?

"A No, sir."

Next group of questions:

"Q Mr. Kelsey has testified that he attended a luncheon with you, John Dioguardi, Vincent Aloi, Murray Taylor, a man that said he was Little Vinnie and another man whose name he did not know but he pointed to Mr. Bonodono. Some time while Mr. Hellerman was on an out of town trip. Shortly after Mr. Taylor made his trip to Canada on the first Sunday or Monday in November, 1969. Did you attend any such meeting that Mr. Kelsey mentioned?

"A I never attended no such meeting.

"Q Mr. Kelsey said at this luncheon you had very little to say. You merely answered one or two questions and nodded your head. Did you do any such thing at any such luncheon?

"A No, sir. I never was at that meeting."

Paragraph 5, "The aforesaid testimony of the defendant, Carmine Tramunti, as he then and there well knew was untrue in that the defendant, Carmine Tramunti, attended a meeting in late October or early November, 1969, at Gatsby's

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Restaurant on East 41st Street in New York City, at which there was a discussion of a stock manipulation scheme involving Imperial Investment Corporation stock.

Section 1623 provides, in pertinent part, as follows:

"Whoever under oath in any proceeding before any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording or other material, knowing the same to contain any false material declaration is guilty of a crime."

In order to sustain its burden of proof against the defendant Tramunti on each of the counts that I have just read to you, the government must establish beyond a reasonable doubt each of these essential elements:

1, that the defendant took an oath to testify truthfully in a trial in the United States District Court for the Southern District of New York, a body authorized by law to administer oaths.

2, that the defendant made false statements as to matters about which he testified under oath as set forth in the indictment.

3, that such false statements were wilfully made in that at the time the defendant made these statements he

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knew them to be false.

4, that the matters as to which it is charged he made the false statements were material to the issues under inquiry by the federal jury.

In the present case it has been stipulated, and there is no dispute, that the defendant Tramunti appeared before the United States District Court for the Southern District of New York, that he took an oath that he would testify truthfully, and that the United States District Court is authorized by law to administer oaths, and that the defendant give the testimony which he is alleged in the indictment to have given.

Further I charge you as a matter of law that the matters about which the defendant testified were material to the issues under inquiry by the court before which the testimony was given. Hence you need not concern yourselves with the first and fourth elements which I have just outlined for you. You must direct your attention to the second and third elements which I have outlined, and they raise the following questions for you to consider:

1, was any part of the testimony given by the defendant as set forth in the indictment false? And if so,

2, did the defendant give any part of the testimony knowing at the time that it was false?

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With regard to the first question which you must consider in connection with each of these counts, was any part of the defendant's testimony quoted in that count false? The government must establish beyond a reasonable doubt the existence of facts which show that the defendant's testimony concerning these facts was false. In other words, the government must establish what it maintains are the true facts.

Now, as I have indicated when I say that the falsity of the defendant's testimony must be established, I mean that the falsity of the set of facts to which a defendant testified must be established. The witness or witnesses whose testimony is offered to establish this falsity need not, and in most cases will not, know what a defendant's actual testimony was, or in fact whether or not a defendant testified at all. Under this statute proof beyond a reasonable doubt is necessary for conviction. The proof of falsity of the defendant's statements may be made by any number of witnesses or by any documentary evidence. Thus the testimony of one witness believed by you is sufficient to convict the defendant of making false declarations, provided the other elements that I have discussed with you have been proven.

The rule of falsity I have outlined above is

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satisfied as to any count if the government proves falsity beyond a reasonable doubt of any one assignment of falsity as to such count. By this I mean it is enough if the government shows that some testimony cited in that count is false. Thus the counts in the indictment charging the defendants with false declarations contain answers given by the defendant reciting more than one fact. It is not necessary that the government prove that each of these factual statements is false, but it is sufficient that the government prove that at least one factual statement as to each count is false.

Before you may convict, the government must also establish beyond a reasonable doubt that the defendant gave such false testimony knowingly. You will recall the statute makes it an offense when one "knowingly makes any false material declaration." You must also find that the defendant acted wilfully.

What do these words, "knowingly" and "wilfully" mean? The word "knowingly" means that the defendant, aware of the true facts, made the false statement with the knowledge that the statement was false; that he intended to make the false statement consciously and in the exercise of his free will. "Wilfully" means that the defendant acted deliberately, intentionally, and purposely. It does not mean inadvertence, negligence, mistake, confusion, or misunderstanding. Thus

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if the false statement, if you do so find any to be false, were the result of an honest mistake or do to faulty memory or recollection or to a misunderstanding of the questions or their import, these circumstances would negate wilfulness. But if at the time the defendant testified before the jury he was aware that he was making a false statement and if he knew and believed that his statement was false at the time he made it, then he acted knowingly, as that term is used in the statute.

Wilfulness involves a state of a man's mind, the intent and purpose with which he acts, and knowing involves what in fact he knew.

The state of a man's mind is inferred from what he says or does. His words, his actions, his conduct and surrounding circumstances may permit an inference of a person's state of mind. Generally, the proof offered is of objective facts and circumstances from which one, in terms of common experience, can rationally and logically conclude the ultimate fact. Accordingly, consideration of all the facts and circumstances established by the evidence together with the exhibits may permit a reasonable inference with a fair degree of accuracy as to the defendant's intentions at the time he gave his testimony.

There has been some reference to the motive of

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the defendant to violate the laws which he is charged with violating. I charge you that proof of motive is not a necessary element of the crimes with which the defendant is charged. Proof of motive does not establish guilt, nor does want of proof of motive establish that the defendant is innocent. If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be or whether any motive be shown, if the presence or absence of the motive is a circumstance which the jury may consider as bearing on the intent of the defendant.

Now, considering the evidence which you have heard, have in mind that the law recognizes two types of evidence. One is direct evidence, such as the testimony of an eye-witness. The other is circumstantial evidence. Circumstantial evidence consists of circumstances from which the jury may infer by a process of reasoning certain facts which are sought to be established as true. Of course, the classic example of circumstance evidence is where somebody in your family comes into the apartment carrying a wet umbreall or wearing a wet raincoat. You conclude it is raining. You do not look outside because you can tell from having seen these wet objects that it is raining.

Both direct and circumstantial evidence are good

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evidence and no greater degree of certainty is required when circumstantial evidence is admitted than when direct evidence is admitted. As a general rule the law makes no distinction between direct and circumstantial evidence. It simply requires that before convicting a defendant the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case. The government asks you to draw one set of inferences while the defendant asks you to draw another. It is for you alone to decide what inferences you will draw from the evidence and what facts you find to have been proved.

An inference is a deduction or conclusion which reason and common sense leads the jury to draw from the facts which have been proved. But in this connection you must remember that if two sets of inferences may reasonably be drawn from the evidence, one consistent with innocence, the other consistent with guilt, then you must not convict because, as I have explained, the government must prove each and every element beyond a reasonable doubt.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether

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a witness is worthy of belief. Consider each witness' intelligence, motive, and state of mind, and demeanor and manner while on the stand, as well as his background.

In evaluating the testimony of any witness you may take into consideration a bias or favor of the witness. Bias covers all varieties of hostility or prejudice against another person. Favor covers all variety of attachment. A witness may feel for one side. Consider the witness' ability to observe the matters as to which he or she has testified and whether he or she impresses you as having an accurate recollection of these matters.

Now, a witness may be discredited or impeached by contradictory evidence or by evidence that at other times he made statements which are inconsistent with his prior testimony. Evidence that a witness has been convicted in the past of certain crimes may be considered by you in determining that witness' credibility. That is not to say that a person with prior convictions is deemed to be incapable of telling the truth. Prior convictions may, however, be considered by you when you determine his believability. If you believe that any witness has been impeached or discredited, it is your exclusive province to give the testimony of that witness the credibility, if any, that you think it deserves. If you think that a witness has testified falsely

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to you, you may reject all of his testimony or you may accept part of it if you find it reliable, and reject the rest.

Consider also any relation each witness may have had to either side of the case, the manner in which each witness may be affected by the verdict, and the extent to which, if at all, each witness is supported or contradicted by other evidence in the case.

Finally, consider whether a witness has an interest in the case. Where a witness has an interest he may have a temptation to color his testimony or even to withhold facts. This doesn't mean that a witness will color his testimony and falsify it because he has an interest. It is merely a fact to be considered by you. Of course, the greater a person's interest, the stronger the temptation may be to color testimony or even falsify. It is for you to say whether a witness at this trial is truthful in whole or in part in the light of his or her demeanor and all the evidence in the case. If you believe that a witness has knowingly testified falsely or counseled anyone to testify falsely concerning any material matter, either at this trial or on a previous occasion while testifying under oath, such as before a grand jury or the SEC, you have the right, after considering all the testimony of such a witness, to

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b3 accept or reject such testimony in whole or in part.

In other words, you may decide to accept all or part of such testimony or you may decide to reject all the testimony of such a witness. You may give the testimony such credibility as you may think it deserves.

The law permits a defendant at his own request to testify in his own behalf. The testimony of the defendant Tramunti is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest creates a motive for false testimony. The greater the interest, the stronger is the temptation, and that the interest of the defendant is a matter which may seriously affect the credence that should be given to his testimony.

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on any issue in this case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties or where the witness' testimony would merely be cumulative. The

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jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

I'm not sending the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of these exhibits as you consider your verdict. I suggest that you begin your deliberations, and then if it would be helpful to you, you may ask for any of all of the exhibits simply by sending a note to me through one of the United States marshals. If you find during your deliberations that you need to hear any of the testimony, you may also send me a note. If you find that anything I have said in these instructions requires clarification, again send the note and an attempt will be made to give you what you may need.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within theprovince of the court and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the defendant. Your function now is to weigh the evidence in this case and to determine the guilt of the defendant with respect to each count in which he is charged. You must base your verdict solely on the basis of the evidence and these instructions as to the

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law. The verdict must represent the considered judgment of each juror. In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous. It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself, but only do so after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest convictions as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times you are not partisans, you are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

If you are divided, do not report how the vote stands, and if you have reached a verdict do not report what it is until you are asked in open court.

In conclusion, ladies and gentlemen, I'm sure if you listen to the views of your fellow jurors and if you apply your common sense, you will reach a fair verdict here.

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Remember that your verdict must be rendered without fear, without favor, without prejudice or sympathy.

Now, ladies and gentlemen, I commend you to the company of the United States marshal for the purpose of commencing your deliberations. I remind you there are six counts in the indictment. You must consider each of these counts separately. Should you find the defendant guilty or not guilty on one of the counts, this does not, of course, control your verdict with respect to any other count.

Your verdict will be in the following form: As to count 1, guilty or not guilty; as to count 2, guilty or not guilty; as to count 3, guilty or not guilty; as to count 4, guilty or not guilty; as to count 5, guilty or not guilty; as to count 6, guilty or not guilty.

Swear in the marshals.

(The marshals are sworn)

THE COURT: Mr. Monroe, at this time you are discharged with the thanks of the court. Thank you very much.

(Alternate juror excused.)

THE COURT: I am going to hand to the forelady a redacted copy of the indictment.

MR. GOLDBERG: May we approach the side bar?

THE COURT: Do you take any exception to my giving

* * * *

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MOTION FOR DISCOVERY CONCERNING
IMMUNIZED TESTIMONY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of JAY GOLDBERG, ESQ., and the prior proceedings had herein, the undersigned will move before this Court on the 28th day of November, 1973, at 9:00 A.M. in Room , for an Order directing the United States Attorney for the Southern District of New York, or his representatives to disclose whether the defendant herein, Carmine Tramunti, testified before a federal grand jury in November and December, 1966, under a grant of immunity, and, if this be the fact, whether the Assistant United States Attorneys involved in prosecuting the instant case against the defendant had actual or constructive knowledge that said testimony was given under a grant of immunity; and for a further Order granting defendant two (2) weeks after the receipt of such information within which to file a motion for a new trial pursuant to Rule 33, Federal

Rules of Criminal Procedure; and for such other and further relief as may be warranted.

Dated: New York, New York
November 20, 1973

Yours, etc.

JAY GOLDBERG
Attorney for Defendant
299 Broadway
New York, New York 10007
[212] 374-1040

TO: Gary Naftalis, Esq.
Assistant U.S. Attorney
U.S. Court House
Foley Square
New York, New York 10007

AFFIDAVIT OF JAY GOLDBERG
SWORN TO NOVEMBER 21st, 1973 -
IN SUPPORT OF MOTION CONCERNING
IMMUNIZED TESTIMONY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JAY GOLDBERG, being duly sworn, deposes and says:

1. I am the attorney for the defendant Carmine Tramunti and I make this affidavit in support of the annexed motion for an order directing the United States Attorney's Office to disclose whether testimony given by the defendant before a federal grand jury in November and December of 1966, was given under a grant of immunity, and whether, if this be the fact, the Assistant United States Attorney's involved in the preparation and trial of the instant case against defendant had actual or constructive knowledge of such immunity. Counsel further requests fourteen (14) days from the receipt of said information in which to file a Rule 33 motion for a new trial.

AFFIDAVIT OF JAY GOLDBERG
SWORN TO NOVEMBER 21st, 1973 -
IN SUPPORT OF MOTION CONCERNING
IMMUNIZED TESTIMONY

2. At the trial herein, defendant herein was cross-examined by the Government concerning statements he made to a federal grand jury in November and December of 1966. See Trial Transcript, pp. 628-36; 645-47. In summation, the Government argued that the 1966 grand jury testimony demonstrated that the defendant began a "course of lying" in 1966 which he continued in 1971 when he appeared as a witness in the Imperial trial (TR. 768). The Government also argued that the defense attack on the credibility of Government witnesses should be rejected because they had "never been shown to testify falsely before any grand jury..." (TR. 764). See also TR. 807-08 and TR. 811, where the Government again cited to the defendant's testimony before the grand jury in 1966 to argue that it established a pattern of perjury.

It is clear that the grand jury testimony was used by the Government in prosecuting the defendant in the present case.

If the testimony were given under a grant of immunity, then there is a serious question as to whether theverdict can be allowed to stand. While

time is request to permit counsel to brief the issue in a Rule 33 motion if the facts are established, the Court's attention is directed to the following cases which establish the gravity of the legal problem which would then be involved: Cameron v. United States, 231 U.S. 710 (1914), where a perjury conviction was reversed when immunized testimony was used to contradict testimony under oath given on another occasion; United States v. Hockenberry, 474 F.2d 247 (3d Cir., 1972), where a perjury conviction was reversed because immunized testimony was used to impeach the defendant's credibility; cf. United States v. Alter, 482 F.2d 1016, 1028 (9th Cir., 1973).

3. On the basis of conversations with Assistant United States Attorney Naftalis after the verdict, your deponent now has reason to believe that the 1966 grand jury testimony used to impeach defendant at trial may well have been given under a grant of immunity.

4. If the defendant's testimony in 1966 were obtained under a promise of immunity, then the prosecutor was under a duty to ascertain such fact

before using the testimony in violation of the terms under which it was given. Cf. Giglio v. United States, 405 U.S. 150 (1972); Application of Kapatos, 208 F.Supp. 883, 888 (S.D.N.Y., 1962); Barbee v. Warden, 331 F.2d 842, 844 (4th Cir., 1964); Nash v. Purdy, 283 F.Supp. 873, 841 (S.D. Fla., 1968).

5. Your deponent has not represented the defendant in any proceeding or in any capacity prior to the present trial, and, in fact, became trial attorney below on extremely short notice, because the defendant's attorney of record could not go forward until November 6th, and because your deponent was the only attorney familiar with the Imperial case who was able to begin trial without inordinate delay (TR., October 14, 1973, pp. 2-3). Until the Government used the grand jury at the trial below, your deponent had no knowledge of the defendant's grand jury appearance in 1966. Your deponent also had no knowledge whatsoever from any source, including the defendant, that immunity may have been conferred on the defendant seven years ago to obtain his testimony at that time. Since counsel had no knowledge of the facts (and still

is not certain of them) his failure to object to use of the grand jury testimony at trial on the speculative ground that it may have been obtained under a grant of immunity is no waiver of the claim, if, indeed, the testimony was immunized. See Barbee v. Warden, supra, at 845, where the court states:

> "It is no answer that Barbee's attorney failed to ask for the results of the test [which was made by the state police and never made known to the prosecuting attorney]. While a diligent defense counsel might have learned about the police reports, this is too speculative a consideration to outweigh any unfairness that actually resulted at the trial. He may not have known the tests were made. Indeed he may have been misled into thinking that the tests, if made, supported the state's theory and were adverse to his client, and that otherwise the state's attorney would not have produced the gun in court.

Similarly, at the trial in this case, your deponent had no reason to assume that the trial assistant, whose fairness and integrity as a prosecutor he respects and has never questioned, would use the grand jury testimony where a constitutional impediment to its use in fact existed. See also

Osborne v. United States, 351 F.2d 111, 115-16 (8th Cir., 1965).

WHEREFORE, it is respectfully requested that the Government be directed to disclose whether the 1966 grand jury testimony was given under a grant of immunity, whether the Assistant United States Attorneys involved in the trial and preparation of the present case had knowledge of this if it be the fact; and it is further requested that in the event the testimony was immunized, that counsel be given two (2) weeks to file a Rule 33 motion, with supporting legal memorandum, on this issue.

JAY GOLDBERG

[Duly Sworn to
November 21st, 1973]

AFFIDAVIT OF GARY P. NAFTALIS
SWORN TO NOVEMBER 23rd, 1973 -
IN OPPOSITION TO MOTION
CONCERNING IMMUNIZED TESTIMONY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

GARY P. NAFTALIS, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of PAUL J. CURRAN, United States Attorney for the Southern District of New York. As such I am assigned to the above-captioned case. I make this affidavit in response to the defendant Tramunti's motion for an order directing the Government to disclose, (1) whether the defendant Tramunti was under a grant of immunity when he testified before a Federal Grand Jury in November and December, 1966; and, (2) whether Government Counsel was aware of that fact at the time of the trial in the captioned case.

2. The Government consents to the defendant's motion and will supply that information in this affidavit.*

* The defendant Tramunti is obviously aware whether he had been granted immunity. Indeed, Tramunti himself is in the best position to know whether he was granted immunity.

3. Since the trial of the captioned case, Government Counsel have learned that the defendant Tramunti had been granted immunity in connection with his 1966 Grand Jury appearance. However, neither your deponent nor Assistant United States Attorney Jed Rakoff, the Assistant United States Attorneys involved in the trial of this case, was aware that Mr. Tramunti was under a grant of immunity at the time of trial. Adn we so represent. Indeed the Grand Jury transcripts, which were utilized in Mr. Tramunti's cross-examination do not state that Mr. Tramunti was under immunity.

4. The fact that Mr. Tramunti had been granted immunity was first brought to the attention of Counsel for the Government by Jay Goldberg, Esq., Mr. Tramunti's trial counsel. On or about November 14, 1973, Mr. Goldberg informed your deponent that he believed that Mr. Tramunti was under a grant of immunity at the time of his Grand Jury appearance. After this conversation, Government Counsel attempted to ascertain whether this was in fact correct. On or about November 16, 1973, your deponent and Assistant

United States Attorney Jed Rakoff had a telephone conversation with Mr. Goldberg. We informed Mr. Goldberg that although we had not fully investigated the matter, it appeared that he was probably correct that Tramunti had been granted immunity. We informed Mr. Goldberg that no formal motion for disclosure would be necessary, and that as soon as we knew the facts with certitude we would disclose them to him, so he could make then whatever motions he felt appropriate.

5. Subsequently your deponent had a telephone conversation with former Assistant United States Attorney William Tendy, Esq., who questioned Mr. Tramunti before the Grand Jury in 1966. Mr. Tendy informed your deponent that Mr. Tramunti had in fact been given immunity in connection with that Grand Jury investigation which related to narcotics trafficking.

6. In view of this fact, the Government has no objection to the Court granting the defendant such time as is reasonable to make a motion for a new trial. The Government, however, respectfully

requests a reasonable time period in which to file papers in opposition to defendant's motion.

7. Finally, in connection with defendant's present motion, he has cited cases which he contends support his legal position that he is entitled to a new trial and also excuse him from his admitted failure to interpose a proper objection. Suffice it to say that the Government's position is that defendant's anticipated motion for a new trial should not be granted. When defendant's motion for a new trial is filed, the Government will file a detailed response in opposition.

s/_____
GARY F. NAFTALIS

[Duly Sworn to
November 23rd, 1973]

DISCOVERY MOTION CONCERNING
DRAGANI IDENTIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIR:

On the annexed affidavit of Jay Goldberg a motion will be made on December 12, 1973 at 9:30 A.M. before Honorable Arnold Bauman, USDJ for an order:

1. directing the two prosecutors in this case to state whether prior to the close of evidence they had been informed by Assistant United States Attorney James Schreiber that one Andrew Nelson, who had been present with Gilbert Dragani in the office of Stoma Investment at the closing of At Your Service Leasing, had been shown a picture spread on October 22, 1973 which included the picture of the defendant and had responded that to the best of his recollection he had never met or seen a number of persons pictured, including defendant. (By way of explanation it was on October 23, 1973 when Mr. Schreiber appeared before Your Honor and offered Gilbert Dragani as a witness who stated that defendant was at the Stoma

office at the time of the At Your Service Leasing closing and had identified defendant from a picture spread)

2. directing Mr. Schreiber to state whether prior to the close of evidence, he had shown the same spread to any other person present in the Stoma office at the time of the At Your Service Leasing closing with negative results as to defendant Tramunti.

Yours etc.

JAY GOLDBERG
Attorney for Defendant
299 Broadway
New York, New York 10007
374-1040

TO: PAUL CURRAN
United States Attorney
United States Court House
Foley Square
New York, New York 10007

AFFIDAVIT OF JAY GOLDBERG
SWORN TO NOVEMBER 30th, 1973 -
IN SUPPORT OF DISCOVERY MOTION
CONCERNING DRAGANI IDENTIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

JAY GOLDBERG, defendant's attorney being duly sworn deposes and says:

The appropriateness of discovery procedures in the context of a Rule 33 motion was recognized by the Second Circuit, in dictum, in United States v. Wolfson 413 F2d 804,808(1969).

There is strong reason to believe that at the time Mr. Schreiber offered to the two prosecutors in this case Gilbert Dragani as a witness who had picked defendant's picture out from a spread as someone he saw in Hellerman's office at the time of the closing of At Your Service Leasing he knew (and either failed to disclose or did disclose to Mr. Naftalis) that Andrew Nelson who had accompanied Mr. Dragani to the closing, had been shown the same spread and failed to identify defendant. In other words, at the time Dragani was offered as a witness and Mr.

AFFIDAVIT OF JAY GOLDBERG
SWORN TO NOVEMBER 30th, 1973 -
IN SUPPORT OF DISCOVERY MOTION
CONCERNING DRAGANI IDENTIFICATION

Schreiber testified before Your Honor he failed to disclose to the Court or to the defense that he had just the day before shown the very same spread to a possible witness, Nelson, with negative results.

In the case at bar, the prosecutors during trial learned that one of their colleagues, Mr. Schreiber, in course of preparing the At Your Service Leasing case for trial found that a cooperating witness Gilbert Dragani had identified defendant from a picture spread as someone who was present in the Stoma Investment office for a lengthy period of time on the day of the closing. Dragani's testimony was devastating to the defense. He was presented as someone who knew nothing of the instant case and the prosecutors made known in several discussions with the court and defense counsel their good fortune in the fact that Mr. Schreiber had stumbled upon such valuable testimony, which if true put the lie to defendant's claim he had not known Hellerman. Dragani testified on October 23 and this date is important. That day Mr. Schreib er as well presented himself as a witness at the Wade hearing.

AFFIDAVIT OF JAY GOLDBERG
SWORN TO NOVEMBER 30th, 1973 -
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On November 29, 1973 at the trial of the At Your Service Leasing fraud case before Judge Knapp, Mr. Schreiber offered as a witness Andrew Nelson, a Doctor of Economics, who testified to the events at the closing at Stoma and the fact that he was present with Gilbert Dragani.

On a matter of identification of several defendants, Fusco, Savino and Lombardo, the Court conducted a Wade hearing and it was developed that Nelson had been shown the same picture spread exhibited to Dragani. Nelson testified that aside from recognizing Fusco, Savino and Lombardo he did not recognize any other picture (and this included the same picture of defendant presented to Your Honor as the one Dragani picked out).* No doubt concerned about his conduct and its affect on Tramunti, the prosecutor first volunteered that he believed he showed the spread to Nelson after the Tramunti trial. But this was erroneous for Nelson consulted his diary, which

*The picture of Tramunti was marked "P8" for identification on November 29, 1973 before Judge Knapp and "A1" for identification on October 23, 1973 before Your Honor at a hearing.

he brought to court, and testified that he had viewed the spread on October 22, the day before the Government in Tramunti offered Dragani as a witness.

The upshot of this is that if Mr. Schreiber on October 23 while offering Dragani to Mr. Naftalis failed to disclose to the defense what had taken place the day before with Nelson, important evidence was suppressed. While it is not essential to the disposition of the motion for Rule 33 relief to prove that the two prosecutors in the case at bar were aware of what had taken place with respect to Nelson before the close of evidence, their knowledge or lack of it is a matter to be considered. Hence the request for discovery.

Whatever the Government's answer should this court order discovery, we will promptly prepare a proper Rule 33 motion. What we seek now is a simple statement of fact on the two points set forth in the Notice of Motion.

s/
JAY GOLDBERG

[Duly Sworn to
November 30th, 1973]

AFFIDAVIT OF JAMES SCHREIBER
SWORN TO DECEMBER 12th, 1973 -
IN OPPOSITION TO DISCOVERY MOTION
CONCERNING DRAGANI IDENTIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

JAMES SCHREIBER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. This affidavit is submitted in connection with the motion of defendant Tramunti for disclosure.

2. To the best of my recollection the only witnesses who were present at the At-Your-Service closing to whom I am confident that I showed a photographic spread which contained a picture of Carmine Tramunti prior to the close of the Tramunti trial were Gilbert Dragani, Donald Fisher, and Andrew Nelson. I may also have shown such a spread to Gerald Miller, Esq. but I do not recall.

3. My notes also reflect that in November, 1972, I showed photographs to Morris Winters. I have no recollection whether the picture of Tramunti was among the photos I showed Morris Winters.

AFFIDAVIT OF JAMES SCHREIBER
SWORN TO DECEMBER 12th, 1973 -
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4. I never questioned any witness regarding whether Carmine Tramunti was present in another room in Hellerman's office at the time of the At-Your-Service closing since Tramunti did not participate in the meeting itself and was not part of the At-Your-Service fraud. I, of course, asked witnesses to identify who was present at the closing itself.

s/_____
JAMES SCHREIBER
Assistant United
States Attorney

[Duly Sworn to
December , 1973]

AFFIDAVIT OF GARY P. NAFTALIS
SWORN TO DECEMBER 12th, 1973 -
IN OPPOSITION TO DISCOVERY MOTION
CONCERNING DRAGANI IDENTIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

GARY P. NAFTALIS, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I am assigned to the above-captioned case and am familiar with prior proceedings. I make this affidavit in response to defendant's motion for disclosure dated November 30, 1973. Defendant's motion requests certain information for use in making a new trial motion. The Government consents to provide defense counsel with this information.

FACTUAL BACKGROUND

2. At the trial of the above-captioned case, Gilbert Dragani testified as a Government witness. Dragani gave testimony which related to Count One of

the indictment -- Tramunti's denial that he knew Michael Hellerman.* Dragani testified that in 1970 he was present at a meeting in Michael Hellerman's office. This meeting related to a stock fraud involving At-Your-Service Leasing stock. While at that meeting Dragani noticed, in another room in Hellerman's office, a man whom he identified as Carmine Tramunti. Tramunti was not, according to Dragani, in the room where the At-Your-Service meeting occurred; nor did Tramunti participate in that meeting.

THE INSTANT MOTION

3. Apparently James Schreiber, the Assistant United States Attorney in charge of the At-Your-Service Leasing stock fraud prosecution, showed a spread of numerous photographs, including one of Tramunti, to two of the nine participants at the meeting Dragani attended -- Andrew Nelson and Donald Fisher. Neither identified the picture of Tramunti.** The defendant

* Michael Hellerman, Mary Ann Hellerman, John Kelsey, Constance Kelsey, Bruce Bazzi and Joseph Barone all gave testimony relevant to that count of the indictment.

**Of course, Tramunti was not at this meeting but rather in another room. Nor is there any showing that either witness physically observed anyone in the other room, as Dragani had.

Tramunti inquires whether your deponent and Assistant United States Attorney Jed Rakoff were aware of this fact prior to the close of evidence in United States v. Tramunti (October 24, 1973). The short answer to this inquiry is no. Your deponent was never told by anyone including Assistant United States Attorney Schreiber either prior to or during the Tramunti trial that these witnesses or any other witnesses present at the At-Your-Service meeting had been shown a photo spread and were unable to identify Mr. Tramunti. Nor to my knowledge was Assistant United States Attorney Jed Rakoff ever so informed. Moreover, neither I nor Assistant United States Attorney Jed Rakoff have ever interviewed either Mr. Fisher or Mr. Nelson or showed them photographs at any time. Indeed, other than Michael Hellerman and Gilbert Dragani, I have never interviewed any of the seven other people who allegedly were present at the At-Your-Service meeting.

4. Certain additional factual matters should be brought to the attention of the Court in connection with this motion. Prior to the cross-examination of the witness Dragani, the Government

supplied defense counsel with a copy of the At-Your-Service Leasing indictment (United States v. Aloi, et al. 73 Cr. 699). This indictment specifically identifies the date and people present at the closing about which Dragani testified. (Para. 19(i) of Count One of that indictment). In addition, defense counsel for Tramunti is also defense counsel for the defendant John Dioguardi in the At-Your-Service case.

5. During the evening of October 23, 1973 (the date Dragani testified), your deponent received a telephone call from Jay Goldberg, Esq., counsel for the defendant Tramunti. Mr. Goldberg asked your deponent whether or not John Kelsey was present at the At-Your-Service closing and, if so, whether or not he recalled Tramunti being there as Dragani had testified. Mr. Goldberg specifically stated that he didn't want to know what anybody else at the At-Your-Service meeting had to say about Tramunti. He specifically told me that he only wished to know about Kelsey because Kelsey had testified at the Tramunti trial and had not mentioned the At-Your-Service meeting. I told Mr. Goldberg that to my knowledge Mr. Kelsey

had never mentioned to Jed Rakoff or me that he had attended such a meeting. However, I told Mr. Goldberg that we would check with Assistant United States Attorney Schreiber and find out whether or not Kelsey was at the meeting. I immediately related the contents of this telephone conversation to Assistant United States Attorney Rakoff. We subsequently contacted Assistant United States Attorney Schreiber who informed us that Kelsey was not at that meeting. Later on the evening of the 23rd of October I telephoned Mr. Goldberg and told him that Assistant United States Attorney Schreiber had informed us that Kelsey was not at the meeting.

6. The testimony of another witness at the At-Your-Service trial should also be brought to the attention of the Court. Edmond Graifer, a cooperating codefendant, testified prior to Messrs. Nelson and Fisher, at the At-Your-Service trial. Graifer gave testimony in response to questioning by Mr. Goldberg, which appears to strongly corroborate the testimony of Mr. Dragani at the Tramunti trial. Graifer testified that there was a heavy set man in

Hellerman's office at the time of the At-Your-Service closing. (Dragani so identified Tramunti) When cross-examined by Mr. Goldberg, Graifer gave the following testimony:

"Q. When you went there, [to the At-Your Service closing] that was at Mike's office; is that correct?

A. I assumed so; that is correct.

Q. Who was present?

A. In the office?

Q. Yes.

A. There was Ralph Lombardo; there was Mike Hellerman, Arthur Ferdinand, myself; there was Gilbert Dragani, Don Fisher, Andrew Nelson, Gerald Miller, Morris Winters. There were a couple of other people there also, but I don't recall their names.

Q. You said one was a heavy-set fellow?

A. Yes.

Q. Did Mr. Schreiber show you any pictures of someone that he said might be the heavy-set person?

A. No, sir.

Q. Did you have any discussions with Mr. Schreiber in the past couple of weeks with respect to whether you could recall all the people who were present at the Stoma Investment closing?

A. The question Mr. Schreiber asked me was who the people were who were present at the closing, and I stated the same answer I just gave to you now.

Q. Did he show you any pictures in the past few weeks?

A. No, sir.

Q. Did you know any assistants by the name of Naftalis or Rakoff?

A. No, sir.

Q. When you said to Mr. Schreiber or said to this jury that one of the people at the meeting was a heavy-set person -- Do you recall that?

A. Yes, sir.

Q. And did you have any discussions with Mr. Schreiber about who that heavy-set person might be or was?

A. No, sir."

(Transcript, United States v. Aloi, pp. 889-91)

s/ _____
GARY P. NAFTALIS
Assistant United States
Attorney

[Duly Sworn to
December 12th, 1973]

AFFIDAVIT OF JED S. RAKOFF
SWORN TO DECEMBER 12th, 1973 -
IN OPPOSITION TO DISCOVERY MOTION
CONCERNING DRAGANI IDENTIFICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

JED S. RAKOFF, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I am assigned to the prosecution of the above-captioned case and am familiar with the prior proceedings in the case. I make this affidavit in response to defendant's motion for disclosure dated November 30, 1973.

2. I have read the affidavit of Assistant United States Attorney Gary P. Naftalis submitted in response to the aforementioned motion of defendant, and I can attest to the accuracy of the statements made there. In particular, I was in constant contact with Assistant United States Attorney Gary Naftalis during the preparation and trial of this case, and during that time I never learned, either from Assistant United States Attorney James Schreiber,

or from any other source, that a spread of photographs, including one of defendant Tramunti, had been shown to any of the participants at the At-Your-Service Leasing closing in Michael Hellerman's office other than Gilbert Dragani. Nor to my knowledge did Assistant United States Attorney Gary Naftalis ever learn these facts either during or prior to the trial.

3. Also, I was present in Court when the Government, prior to the cross-examination of the witness Dragani, supplied defense counsel Jay Goldberg, Esq., with the At-Your-Service Leasing indictment referred to in paragraph 4 of Mr. Naftalis' affidavit, and I saw Mr. Goldberg receive said indictment.

4. Finally, I can corroborate that on the evening of October 23, 1973, the date Dragani testified, Assistant United States Attorney Gary Naftalis, following a phone conversation in my presence, turned to me and said that it had been Jay Goldberg on the phone and that Goldberg wanted to know whether John Kelsey had been present at the aforementioned At-Your-Service closing. Mr. Naftalis also tole me that Mr. Goldberg stated he was not interested in what anyone

else at the At-Your-Service closing had to say. I replied that, though I had not much discussed the At-Your-Service transactions with Kelsey, I had the impression that Kelsey had not been at that meeting. Assistant United States Attorney Gary Naftalis then suggested that we check with Assistant United States Attorney James Schreiber, who would probably know for sure. We did so and learned that Kelsey had not been at that meeting. I believe I later confirmed this with Kelsey himself.

s/_____
JED S. RAKOFF
Assistant United States
Attorney

[Duly Sworn to
December 12th, 1973]

MOTION FOR A NEW TRIAL PURSUANT
TO RULE 33 F. R. CR. P.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The defendant, Carmine Tramunti, moves the Court to grant him a new trial, pursuant to Rule 33, Federal Rules of Criminal Procedure, or alternatively for a hearing on his motion for a new trial, for the following reasons:

1. The Government used testimony obtained from the defendant under a grant of immunity, to impeach him on a cross examination in violation of the defendant's rights under the Fifth Amendment to the Constitution and under the under the immunity statutes under which the testimony was compelled.

2. The Government failed to disclose evidence whose high value to the defense could not have escaped it, in violation of defendant's constitutional rights to due process and a fair trial.

Dated: New York, New York
January 8, 1974

Yours, etc.,

JAY GOLDBERG
Attorney for Defendant
299 Broadway
New York, New York 10007
[212] 374-1040

Rcd

TRIAL COURT'S OPINION
ON RULE 33 MOTION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

versus 73 Crim. 514

CARMINE TRAMUNTI,

Defendant.

----------X

New York, N.Y.
February 27, 1974
9:40 a.m.

Before:

Hon. Arnold Bauman,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
By: JED S. RAKOFF, Esq.,
Assistant U. S. Attorney

JAY GOLDBERG, Esq.
Attorney for Defendant

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE CLERK: United States v. Carmine Tramunti. Is the government ready?

MR. RAKOFF: The government is ready.

THE CLERK: Is the defendant ready?

MR. GOLDBERG: The defendant is ready, your Honor.

MR. RAKOFF: With the Court's permission, I would ask that Mr. Naftalis, who is no longer with our office, be permitted to sit at counsel table.

THE COURT: Motion granted.

I intended to read my decision on your motion, Mr. Goldberg. Normally I might have been tempted to write something about this because of the importance of the questions you raised, but I think that because of the pressure of business in my own chambers I am reluctantly left to the alternative of reading my decision into the record. My apologies to counsel, both of whom, by the way, have done a thoroughly outstanding job in connection with this matter, the government and defendant's counsel.

Normally, as I said, I would have written an opinion on it, but I just do not have the time and I cannot see this matter delayed any further.

The defendant, Carmine Tramunti, has moved this Court for an order, pursuant to Rule 33 of the Federal Rules

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of Criminal Procedure, granting a new trial.

He sets forth two arguments in support of the motion:

First, that the government's use of his immunized grand jury testimony on cross-examination violated rights secured by the Fifth Amendment, and second, that the government failed to comply fully with its disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963).

After carefully reviewing the competing arguments most ably presented by counsel for both sides, I have concluded that defendant's motion must be denied in all respects.

I turn first to the more difficult and substantial of the defendant's arguments, that based on the government's use of his immunized grand jury testimony.

At the trial of the instant indictment, defendant Tramunti was cross-examined by government counsel regarding certain testimony he had given before a grand jury sitting in the Southern District of New York in 1966.

Specifically, he was asked why, in 1966, he had denied knowing what John Dioguardi's occupation was and why, at the same juncture, he had been unable to remember his own occupation of some two or three years earlier.

At the time of this cross-examination, neither

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the Assistant United States Attorneys conducting the prosecution, nor defendant's trial counsel were aware that the defendant had testified in 1966 under a grant of immunity.

This fact was discovered only after the trial, when the government filed an affidavit stating that the defendant had been granted immunity in connection with a narcotics investigation.

It was therefore assumed, by all parties, that defendant was granted immunity under 18, U.S.C., Section 1406, which has been repealed.

In commencing this branch of the discussion, I wish to note that the defendant's counsel failed to make specific objection to the introduction of this allegedly immunized testimony. The rule of this Circuit regarding failure of counsel to make timely objection is a severe one.

The Court noted in United States v. Indiviglio, 352 F.2d 276 (2nd Cir. 1965), cert. denied, 383 U.S. 907 (1966):

"Federal courts, including the Supreme Court, have declined to notice errors not objected to below even though such errors involve a criminal defendant's constitutional rights."

The cases following Indiviglio are too numerous to require citation here; a recent gloss was provided in

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United States v. Bryant, 480 F.2d 785 (2nd Cir. 1973):

"The power to notice plain error (i.e., where there has been no specific objection at trial) is one that we exercise only where the fundamental fairness of the trial is affected...only if serious injustice was inflicted upon a defendant, or if he was convicted in a manner inconsistent with fairness and integrity of judicial proceedings, will we exercise our power under the plain error rule."

Hence, even assuming arguendo that the use of defendant's grand jury testimony was improper, I cannot find that this use amounted to an injustice of sufficient magnitude to warrant invocation of the plain error rule.

I shall, however, give some consideration to the merits of defendant's argument, to which I now turn.

The defendant now contends that his rights under both the Fifth Amendment and Section 1406 were violated by the government's use of his testimony to cross-examine him. He argues, relying at least in part on Kastigar v. United States, 406 U.S. 441 (1972), that the Fifth Amendment prohibits the prosecution from using compelled testimony in any respect.

This contention, I submit, ignores a venerable history of judicial construction of immunity statutes and hence glosses over many of the careful distinctions which

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have evolved in the application of immunity.

The government correctly argues that the scope of immunity can best be understood by an examination of two cases, Glickstein v. United States, 22 U.S. 139 (1911) and United States v. Bryan, 339 U.S. 323 (1950).

In Glickstein, the defendant had testified in a bankruptcy proceeding, under a statute which provided that such testimony could not be used against him in any criminal proceeding.

The Supreme Court nevertheless held that the immunity statute did not protect a witness from prosecution for perjury committed while testifying under the statute's compulsion.

#2 In Bryan, the defendant had refused to produce subpoenaed books and records before a Congressional committee, and was then prosecuted for "willful default" under 2 U.S.C. Section 192.

She argued that the alleged contemptuous testimony she had given before the House committee could not be introduced at trial, arguing that it was immunized under a statute which provided that no testimony given before a Congressional committee could be used subsequently against the witness, save in a prosecution for perjury.

The Supreme Court held that immunity did not

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attach to evasive and contemptuous testimony, and thus that the defendant's statements before the House committee were properly admitted at trial.

The Glickstein and Bryan cases establish several principles directly applicable to the case at bar. Both cases emphasize that immunity attaches only to testimony regarding past criminal acts, and does not shelter criminal acts committed in the process of testifying.

As the Court stated in Bryan:

"The debate attending enactment of the statutes here in question and the decisions of this and other federal courts construing substantially identical statutes make plain the fact that Congress intended the immunity therein provided to apply only to past criminal acts concerning which the witness should be called to testify...There is, in our jurisprudence, no doctrine of 'anticipatory contempt.' While the witness' testimony may show that he has elected to perjure himself or commit contempt, he does not thereby admit his guilt of some past crime about which he has been summoned for questioning but commits the criminal act then and there." 339 U.S. at 340-341.

We can also learn from Glickstein and Bryan that the Supreme Court has consistently construed immunity statutes in light of their underlying purposes, and has thus

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never been hesitant to engraft new exceptions on such statutes when to do otherwise would undermine these purposes.

The Court's willingness to read such statutes flexibly is important here, for the defendant has argued forcefully for a construction of Section 1406 based on the maxim which, freely translated, is that in expressing one it is made to exclude others.

He notes that the statutes provide, in familiar terms, that the compelled testimony shall not be used as evidence in any criminal proceeding, but provides exceptions for prosecutions based on perjury or contempt. These, he argues, are the only constitutionally permissible exceptions to the statutes' grant of immunity.

Readers of Glickstein and Bryan will find that this argument has a familiar ring.

The immunity statute in Glickstein, it will be recalled, admitted of no exception: it provided simply that such testimony shall not be offered in any criminal proceeding.

The Court nevertheless read in an exception for perjury, reasoning that to do otherwise would "destroy the words of the statute" and "frustrate is obvious intent," which was the securing of truthful testimony.

In Bryan, similarly, the statute proscribed the

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use of testimony in a subsequent criminal proceeding, save only for a perjury prosecution.

The Court conceded that contemptuous testimony came within the literal language of the immunity statutes, but held that to apply the statute to such testimony "would subvert the Congressional purpose in its passage."

The Court went on to state:

"It is now contended that the protection of the statute, which was extended to witnesses in an effort to obtain testimony, protects equally the person who willfully withholds testimony and is prosecuted for his willful default. This contention completely ignores the purpose of the immunity. In the first place, it imputes to Congress the contradictory and irrational purpose of granting an immunity from prosecution for contempt in order to obtain evidence of that contempt. And in the second place, it assumes that Congress had some purpose to compel testimony of the kind here involved -- statements of refusal by the witness to answer questions or produce documents -- in return for which it was willing to grant an immunity. Such an assumption cannot be made." 339 U.S. at 338-39.

The plain import of the Court's construction of the Glickstein and Bryan immunity statutes, then, is that perjury and contempt cannot be considered the sole and

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exclusive exceptions in which otherwise immunized testimony might be useable.

Section 1406, by singling out these two, has done no more than enumerate the more obvious situations where immunity would not apply.

I therefore see no impediment to the government's use of the defendant's evasive and false grand jury testimony of 1966 for purposes of impeachment in the instant case, for I can find nothing in the policies underlying the concept of immunity which might proscribe the use of such testimony.

As the Supreme Court has so often recognized, the purpose of conferring immunity is to elicit truthful albeit incriminating testimony, or, as Justice Holmes stated in Heike v. United States, 227 U.S. 131 (1913):

"The obvious purpose of the (immunity) statute is to make evidence available and compulsory that otherwise could not be got."

This purpose is not served when an immunized witness proffers perjured or contemptuous testimony; such testimony, as the Bryan court noted, is not "compelled" and therefore cannot be immunized.

The only testimony that can be immunized, then, is that testimony which the immunity statute is intended to

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elicit; the Fifth Amendment, after all, requires no more.

In United States v. Pappadio, 235 F.Supp. 887 (S.D.N.Y. 1964), aff'd. 346 F.2d 5 (2nd Cir. 1965), Judge Herlands gave a cogent explanation of the rationale behind immunity statutes, and of the consequent limits on the protection they afforded:

"Under 18 U.S.C. Section 1406, the immunity statute, the government has the right to obtain truthful testimony from the witness. That is the objective of the provisions that excludes the witness' perjury, if any, from the immunizing effect of the statute.

"The immunity statute does not create an opportunity for a witness to effect an illusory exchange of real immunity in return for false testimony. There must be a bargain equivalent whereby the government obtains the truth in exchange for its granting immunity."

235 F.Supp. at 890.

The defendant relies chiefly on two cases which I find wholly inapplicable to the problems presented by the case at bar: Cameron v. United States, 231 U.S. 710 (1914) and United States v. Hockenberry, 474 F.2d 247 (3rd Cir. 1973).

These cases have no bearing on the instant problem simply because both involved the government's use of

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true testimony about prior events, introduced to demonstrate the truth of the matters asserted therein.

Such testimony, when given under a grant of immunity, can clearly not be used against a witness subsequently.

In Hockenberry, for example, the government sought to introduce portions of a defendant's grand jury testimony in which he had admitted signing false affidavits to obtain search warrants in order to impeach the defendant's credibility at the trial. This, obviously, was a truthful admission of prior wrongdoing and thus entitled to immunity.

Furthermore, the Court in Hockenberry clearly defined the limits of its holding:

"...(A) witness who testified before a grand jury is required and sworn to tell the truth. The grant of immunity is superimposed upon that requirement. Protection is granted against future injurious use of the incriminating truth that the witness is required to speak, not against prosecution for or the use of any exculpatory falsehood that he may utter to avoid the required admission of wrongdoing." 474 F.2d at 249.

Defendant advances one other argument that is worthy of brief consideration. If, as the government contends, the immunity statutes protect only truthful testimony,

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and thus permit the use of false testimony for any purpose, including, as here, the impeachment of a witness, who, the defendant inquires, is to be the arbiter of the truth or falsity of the proffered statements?

Is not, the argument continues, the defendant entitled to a jury determination of falsity, rather than an ad hoc decision by a district judge in the midst of a trial?

There are, I think, two answers to this query, one general, and one rooted in the specifics of this case.

The general answer is that trial judges must and do make similar determinations of truth or falsity whenever they are called upon to admit into evidence prior unprosecuted perjurious statements as prior similar acts.

See generally, United States v. Keilly, 445 F.2d 1285 (2nd Cir. 1971); United States v. Bradwell, 388 F.2d 619 (2nd Cir. 1968), cert. denied, 393 U.S. 867 (1968).

Jury determinations are not required in such situations, and I see no reason why they should therefore be required here.

Furthermore, the facts of this case offer particularly compelling evidence of the falsity of the previous grand jury testimony. The allegedly false and evasive answers, it will be recalled, consisted of defendant's

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failure to remember his own occupation and that of John Dioguardi prior to 1966.

However, at the trial of the instant indictment--before the government sought to introduce the grand jury testimony -- the defendant testified that he did recall the answers to the very questions he was unable to remember in 1966.

This patent contradiction provides a clear basis for supposing that defendant's grand jury testimony was false and evasive and is, I conclude, a sufficient preliminary showing of admissibility.

For the reasons stated above, I find no constitutional infirmity in the government's use of defendant's grand jury testimony, and that branch of the instant motion is accordingly denied.

The second argument which the defendant advances in support of his new trial motion is less troublesome.

At the trial, the goverment called Gilbert Dragani who testified that he had seen the defendant in Michael Hellerman's office in 1970 at the At-Your-Service Leasing stock closing. This testimony was relevant to Count 1 of the instant indictment, which alleged as perjurious defendant's denial that he knew Michael Hellerman. Dragani's testimony came to the government's attention in

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the following manner.

James Schreiber, the Assistant United States Attorney in charge of the At-Your-Service Leasing stock fraud prosecution showed a spread of photographs to Dragani while preparing for the trial of that case. One of the photographs depicted the defendant Tramunti, and when Dragani identified it, Schreiber promptly brought this information to the attention of the Assistant United States Attorneys in charge of the instant prosecution.

Subsequent to the trial it was learned that Schreiber had shown the same spread of photographs to two other participants in the A-Y-S-L meeting, Andrew Nelson and Donald Fisher. Neither identified the defendant's picture.

This information was not relayed by Schreiber to the government lawyers in charge of this prosecution, and it did not become known to any of the lawyers in the Tramunti case until Nelson and Fisher testified at the A-Y-S-L stock fraud trial before Judge Knapp.

Defendant now contends that the government's failure to disclose this information to him violated his right to due process of law secured by Brady v. Maryland, 373 U.S. 83 (1963).

For the reasons that follow, I have concluded that this argument is without merit.

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In Brady, the Supreme Court held that "The suppression by the prosecution of evidence favorable to an accused upon request, violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

#4 This standard has recently been the subject of a thorough analysis by Judge Pollack, who restated it in the following terms:

"According to the language of Brady, in order to come within its ambit, the subject matter of the defendant's complaint of suppression must be evidence...favorable to defendant for which he made a timely demand;...Moreover, such evidence must be material, either to guilt...or punishment. The absence of any of these factors, unless supplied by implication...seemingly precludes a claim of deprivation of due process under Brady." United States v. Brawer, 367 F.Supp. 156 at 169 (S.D.N.Y. 1973).

Defendant's claim fails to meet the Brady standard in several respects. In the first place, it is not at all clear that the undisclosed information was in any meaningful sense exculpatory. Nelson and Fisher were merely unable to select the defendant's photograph from a group of photographs as a participant in the A-Y-S-L closing; neither asserted that the defendant was not present in Hellerman's

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offices while the closing was taking place, for it must be recalled that Dragani testified that he saw the defendant in another room in Hellerman's office, not at the A-Y-S-L meetin itself. Hence, Dragani's testimony on the one hand, and Nelson's and Fisher's on the other, are not necessarily inharmonious.

Secondly, the undisclosed information does not meet the standard of materiality normally formulated in Brady and Brawer.

In United States v. Tomaiolo, 378 F.2d 26 (2nd Cir.) cert. denied, 389 U.S. 886 (1967), our Court of Appeals stated that "in a new trial a convicted defendant must, moreover, show more than the suppression of evidence. The evidence must also be shown to be material and of some substantial use to the defendant."

Moreover, we have been recently reminded by the Supreme Court in Moore v. Illinois, 408 U.S. 786 (1972) that the determination of materiality must be made "in the light of all the evidence."

Bearing that in mind, it is pertinent to note that Dragani was not the only witness who testified to the defendant's acquaintance with Michael Hellerman. Four other witnesses -- Michael Hellerman, Maryann Hellerman, John Kelsey and Constance Kelsey -- all testified that defendant

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had met with Hellerman on various occasions.

Dragani's testimony, then, was scarcely the lynchpin of the government's case, not even with regard to Count 1. Hence, even assuming that the undisclosed testimony of Nelson and Fisher were able to undermine thoroughly the force of Dragani's testimony, the jury would have been unlikely to reach a different verdict.

Having presided at the trial I can attest that the government's evidence on this count was overwhelming, and thus the undisclosed information cannot be deemed material to the issue of guilt.

Cf. Moore v. Illinois, supra, at 797.

Finally, defendant's claim must be rejected because he was unquestionably aware of the existence of Nelson and Fisher.

As our Court of Appeals has stated, "The availability of witnesses to the defense through its own investigation is a relevant consideration" in resolving Brady questions.

United States ex rel. Meers v. Wilkins, 326 F.2d 135 (2nd Cir. 1964).

In the instant case, defense counsel was supplied with a copy of the A-Y-S-L indictment (United States v. Aloi, et al., 73 Cr. 699) prior to his cross-examination of

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Dragani.

The indictment identifies various people allegedly present at the A-Y-S-L closing, including Nelson and Fisher.

Counsel, however, made no attempt to interview these individuals, nor did he seek a continuance for that purpose. He did emphasize in his summation, however, that the government had failed to produce any other witnesses who might buttress Dragani's testimony despite the large number of participants at the A-Y-S-L closing.

A remarkably similar situation was the subject of a comment by our Court of Appeals in United States v. Ruggiero, 472 F.2d 599 (2nd Cir. 1973), cert. denied 412 U.S. 939 (1973):

"The purpose of the Brady rule is not to provide a defendant with a complete disclosure of all evidence in the government's file which might conceivably assist him in preparation of his defense, but to assure that he will not be denied access to exculpatory evidence known to the government but unknown to him.

"Here the appellant was on notice of the essential facts required to enable him to take advantage of such exculpatory testimony as Lundy and Sheridan might furnish.

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"He was also well aware of the process by which they could be compelled to to testify at trial.

"As long as they could be subpoenaed to testify, their grand jury testimony, if offered in their absence, would have been excluded as hearsay.

"If appellant wanted their testimony, the obvious and logical course was to subpoena them and put them on the witness stand."

Here defense counsel failed to interview Nelson and Fisher, and then attempted to persuade the jury that the defendant was entitled to favorable inferences from the government's failure to call them, or any other participants at the A-Y-S-L meeting to corroborate Dragani's testimony.

He now seeks to argue that the government's failure to apprise him of the substance of the testimony of these men was violative of due process.

As Judge Pollack noted in Brawer, this "was not a novel strategic ploy of defense counsel then; it has gained no stature since."

Accordingly, this branch of defendant's motion is also denied.

That is the ruling of the Court.

Is the government ready for sentence?

MR. RAKOFF: Yes, your Honor.

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THE COURT: Is the defendant ready for sentence?

MR. GOLDBERG: Yes, your Honor.

THE COURT: I will hear the government first.

MR. RAKOFF: Your Honor, the government would simply say that we submit that perjury is a crime that strikes at the very essence of the administration of justice. That in this case Mr. Tramunti, in a criminal case, went before a jury and repeatedly perjured himself as the jury in this prosecution found.

We would ask that this case and this bringing Mr. Tramunti to the bar of justice stand as a signal to any who would undertake such perjury so that the perjury statute is not a dead statute; it stands as a vindicator of the truth. That is all we have to say, your Honor.

#5 THE COURT: Mr. Goldberg, I will hear you.

MR. GOLDBERG: Your Honor, of course I could add to the record with a subsequent motion. If you recall, you had pointed out that I had not spoken to Nelson to find out whether it was just a question of Nelson not being able to pick out a picture, and, of course, your Honor wrote his opinion. I am not attempting to reargue.

THE COURT: Make whatever record you want to make.

MR. GOLDBERG: I communicated with Mr. Rakoff.

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He said that Mr. Nelson would prefer that I communicate with him through his attorney and I did. I sent a letter to Mr. Arkin. I think I sent a copy to Mr. Rakoff. Mr. Arkin sent me a letter which I didn't receive until yesterday because he had sent it to the wrong address. In the letter he advises me that Nelson said that he did not remember seeing Tramunti at the closing of the At-Your-Service Leasing at Mr. Hellerman's office.

THE COURT: You see, Mr. Goldberg, in addition to what I said in the opinion which I have just read into the record, it is my view that even if you had put these two people on the witness stand all they could have said was that they didn't remember seeing Mr. Tramunti there. It seems to me they could not have said he was not there. The most they could have said is that they had no recollection of seeing him there, and that, it seems to me, is an insufficient basis on which to set aside the verdict.

MR. GOLDBERG: Your Honor, I respect the scholarship that went into your Honor's opinion.

THE COURT: It is not as much as I would have done if I had the time to put this opinion in writing, but it will have to do.

MR. GOLDBERG: We recognize the argument is a substantial one from the defense point of view, at least the

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first argument that I made, but might I at this time --

THE COURT: I have acknowledged that it is an argument worthy of serious consideration. I have attempted to give it serious consideration.

MR. GOLDBERG: I am sure you have.

Your Honor, I don't want to prolong the presentence proceedings. I want to hand this up.

THE COURT: Would you please mark this and make this part of the record. Is that what you want, Mr. Goldberg?

MR. GOLDBERG: Yes.

MR. RAKOFF: Can we have a copy of that, Mr. Goldberg?

THE COURT: I am sure Mr. Goldberg will give you a copy. It is on the motion for a new trial. Just incorporate it.

xxx

(Defendant's Exhibit A was marked.)

MR. GOLDBERG: I don't want to prolong the presentence proceedings. Your Honor has always been gracious with respect to inspection of the presentence reports. I haven't availed myself of that. I know the practice of the probation department is to go into a good deal of hearsay material. Your Honor is here sentencing this defendant on a specific case that goes back a lot of years and also in light of the fact that he has just gotten through -- I don't

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know whether he has completed his sentence in the related crimes of society.

THE COURT: Go ahead.

MR. GOLDBERG: I have completed my plea.

THE COURT: Mr. Tramunti, is there anything you wish to say before sentence is pronounced?

DEFENDANT TRAMUNTI: No, sir.

THE COURT: Mr. Tramunti, I don't see any point in making a long speech about what I am going to do, but I do think that you are entitled to know why I am doing what I am going to do. You present a situation that I have seen since I have been on the bench and indeed before in my experience as a person who almost lives two lives, one of them that of a home life that comes very close to being perfect. But, by George, once you step beyond that, your entire life has been spent in criminal conduct.

I have previously said in other connections the way a man lives his life has got to be considered by the Court in imposing a sentence, and everything one can hear from the most responsible sources indicates that you have lived your adult life entirely outside of the law.

Now, the perjury of which you have been convicted in several counts, and I would say that I think was properly pleaded, nonetheless was all committed in one appearance

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before the grand jury on that one time, and under the existing case law of this Circuit, I do not feel at liberty to impose consecutive sentences.

Accordingly, the sentence of the Court is that you be committed to the custody of the Attorney General for a period of five years on each count, the sentences to run concurrently. That is the sentence of the Court.

MR. GOLDBERG: Thank you.

MR. RAKOFF: Your Honor, the defendant has already been remanded, but, for the record, we would ask that it be continued.

THE COURT: Is there any application for bail pending appeal?

MR. GOLDBERG: No, there is not, not at this time.

THE COURT: There is no application, so there is no necessity for me to say anything.

All right, gentlemen.

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DEFENDANT'S EXHIBIT A
IN SUPPORT OF RULE 33
MOTION

STANLEY S. ARKIN P.C.
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(212) 864-1480

STANLEY S. ARKIN
S. ARISOHN

February 13, 1974

Jay Goldberg, Esq.
~~200 Park Avenue~~
~~New York, New York 10017~~

Re: Andrew Nelson

Dear Mr. Goldberg:

My client, Andrew Nelson's answers to your questions which you pose are as follows:

As to question one, he states the following:

"I do not remember seeing Mr. Tramunti at the closing of AYSL at Mr. Hellerman's office."

As to question two, he answers as follows:

"Mr. Schreiber did not identify Mr. Tramunti at anytime nor did he ask me any questions about Tramunti."

Very truly yours,

Stanley S. Arkin

SSA/lb

* * * * *

A Yes.

Q To your knowledge, did the Government aid or assist you in having the sentence reduced?

A No, the Government did not aid me in having the sentence reduced.

Q Have you committed any other crimes for which you have not been prosecuted?

A Yes, sir.

Q Is it your understanding, sir, that you will not be prosecuted for other crimes that you have committed beyond the three upon which you have been sentenced?

A Yes, sir.

Q Do you understand further that that is premised on you never committing a crime again?

A Yes, sir. If I --

MR. GOLDBERG: I move to strike. It's not responsive.

THE COURT: He answered the question.

Q Do you understand, sir, that you are not being prosecuted for those crimes --

MR. GOLDBERG: I object to the leading.

THE COURT: Overruled.

Q -- is dependent upon you being honest and truthful and cooperating with the Government and testifying

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honestly and truthfully only as a witness in cases involving criminal activities of which you are aware?

MR. GOLDBERG: I object.

THE COURT: Sustained.

Put another question.

Q To your knowledge, what is your understanding with respect to conditions you are required to observe if you are not prosecuted for any other crimes?

A I must never commit another crime. I must co-operate with the Government fully and truthfully and if I lie in any way the Government will prosecute me for perjury and if I commit another crime the Government has the right to go back and prosecute me on every other crime that I ever committed.

MR. GOLDBERG: I wish to make an objection if your Honor wants to hear it now.

THE COURT: It's late for an objection.

MR. GOLDBERG: I will move to strike.

THE COURT: Denied.

Go ahead.

Q How old are you?

A 35.

Q Are you married?

A Yes, I am.

* * * * *

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* * * * *

Q You didn't want to be punished for all that you had committed, isn't that so?

A Yes, sir.

Q You sought to win the favor of the Government, isn't that so?

A I don't know what you mean.

Q You sought to ingratiate yourself with the Government so the Gofernment would take action beneficial to you, isn't that so?

A Not the way you say it, no.

Q Did you hope --

THE COURT: He is still answering.

A If you want me to explain it I will explain it.

Q I didn't ask you to explain it.

THE COURT: Put a question.

Q For example, the Government would dismiss cases against you, right?

A If I cooperated with the Government and told the truth.

Q As you saw it?

MR. NAFTALIS: Objection.

THE COURT: Sustained.

That is a simple declarative statement and not a question.

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* * * * *

Q Tell us what it is.

A It is the understanding that my attorneys reached with Mr. Morvillo on my behalf.

Q Mr. Morvillo was the Chief of the Criminal Division of the United States Attorney's Office?

A Yes, sir.

MR. NAFTALIS: We offer it in evidence.

MR. GOLDBERG: My position has already been noted on the record, your Honor.

THE COURT: So has mine. Proceed.

xx (Government's Exhibit 6 received in evidence.)

MR. NAFTALIS: That is the same document which was previously marked as 3502 for identification and supplied to counsel.

May I read this?

THE COURT: Yes.

MR. NAFTALIS: Ladies and gentlemen of the jury, this is a four-page document entitled "Memorandum of Agreement. It reads:

"Whereas Michael Hellerman has been involved in various past criminal activities and is now willing to acknowledge his criminal past, and to undertake to make efforts towards testitution to victims of his crimes, to commit no crimes in the future, and to testify truthfully

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before the grand jury and/or at trial in any cases in which he is requested to testify;

"Whereas the grand juries filed two indictments, United States v. Aloi, et al., Imperial Investment, 71 Cr. 967 and United States v. Soldano et al., Belmont Franchising, Indictment 71 Cr. 558, naming as defendants Michael Hellerman and othrs;

"Whereas the grand juries have other investigations presently underway and/or pending involving facts, events and individuals of which Michael Hellerman has personal knowledge and which matters if disclosed would be of significant assistance in those investigations, and it is hereby agreed by Michael Hellerman and by the United States Attorney's Office for the Southern District of New York by Robert G. Morvillo, Assistant United States Attorney:

"1: Michael Hellerman shall commit no more crimes in the future and shall be barred for life from employment in the securities business and from acting as an advisor to anyone other than members of his immediate family with regard to securities investments.

"2: Michael Hellerman will testify truthfully before the grand jury and/or at trial in any cases in which the government requests him to testify.

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"3: Michael Hellerman shall disclose all information the government requires with respect to activities of himself and others in all matters which the government is investigating or with respect to which the government requests information.

"4. Hellerman shall enter a plea of guilty to one two-year count with respect to the Belmont Securities fraud and to one-two-year count with respect to the At-Your-Service fraud, in addition to the plea of guilty already entered to a two-year count in the Imperial fraud case.

"5. During such time as Michael Hellerman is in prison the government will take such precautions as are necessary to secure his physical safety.

"6. At the time Michael Hellerman is released from custody after serving sentences imposed on his pleas of guilty, the government will assist Michael Hellerman and his family to relocate in some suitable location under conditions that will prevent persons outside the Department of Justice from learning where he is living.

"7: Provided that Michael Hellerman complies with all the foregoing terms of this understanding, after sentence is imposed on Hellerman, upon his guilty pleas, the government will not further prosecute Hellerman with

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regard to the three cases in which he is pleading guilty nor with regard to (a) the Globus case; (b) the Minute Approved Credit case; (c) the Julian Weintraub case; Jacob Landau case; (d) the case involving Irving Lane, cashing checks in the Bahamas; (e) The Automated Information case; and (f) the Computer Micro Data case.

"The government will in any instance where it becomes necessary use its best efforts to persuade any state or local prosecutor not to prosecute Hellerman with regard to the matters mentioned herein.

"In the event that Michael Hellerman violates any of the conditions or terms of this understanding, the government will be free to and shall prosecute Michael Hellerman with regard to any violations of the criminal law in which he may have been involved, including the cases specifically enumerated in paragraph 7."

Signed by Mr. Morvillo for the United States Attorney's Office, Mr. Hellerman, Mr. Hellerman's attorney and it is dated October 19, 1972.

THE COURT: I think I should tell you as I did a moment ago, with that agreement, I have permitted the admission of that agreement in evidence and the reading to you because there was extensive cross-examination with relation to the arrangements between this witness and the

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government.

It does not relate to the defendant on trial and is not to be considered against him.

BY MR. NAFTALIS:

Q Mr. Hellerman, the agreement indicates you are supposed to furnish the government with information about all criminal activities in which you have been involved or have knowledge, is that correct?

A Yes, sir.

Q Have you done so, sir?

A Yes, I have, sir.

Q As a matter of fact, is it not the fact, sir, that all that information which was elicited in cross-examination about bribery of judges and all that other dirty business in which you were involved, this is information that you voluntarily came forward and told the government about?

A The government didn't know anything about it until I told the government about it.

MR. GOLDBERG: Your Honor, I am going to ask that that be stricken. He doesn't know what the government knew or any of the agencies knew about his criminal activities.

THE COURT: Strike that. I will permit the

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remainder of his answer to stand, however.

Q In the agreement, it only refers to six pending matters about which you won't be prosecuted, is that correct, pending crimes?

A Yes, sir.

Q Were those the ones, to your knowledge, that were known about at the time you signed the agreement?

A Yes, sir.

Q And a lot of the other things that were brought out in cross-examination were things you told the prosecutors about after the signing of the agreement?

A That is correct, sir.

Q The agreement talks about making restitution by you to the people who were victimized by your crimes, is that correct?

A Yes, sir.

Q Have you done so, sir?

A Yes, sir.

Q How much have you promised to give?

A I promised to make restitution for $100,000 and I have made already restitution of $12,500 and I have to make the restitution of the balance when I get a job and start working.

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Q I take it you have not the funds to make any further restitution at this time until you get a job?

A That is correct. I am broke and I haven't any funds. I just came out of jail.

MR. GOLDBERG: I move to strike anything about he is broke.

THE COURT: Yes, strike out that he just came out of jail. The remainder of the answer stands.

Q As part of this agreement, Mr. Hellerman, you understand that you are not to commit any further crimes, is that correct?

A Yes, sir.

Q Since the signing of this agreement have you engaged in any criminal activity in any way, shape or form?

A No, sir.

Q And you understand pursuant to this agreement you are required to testify truthfully, is that correct?

A Yes, sir.

Q Do you understand, sir, that if you do not testify truthfully in this trial or any trial or any proceeding in which you are called as a witness you subject yourself to a possible perjury prosecution?

A If I tell one lie I was told I would be definitely prosecuted for perjury and all other crimes that I committed

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before.

MR. KAFTALIS: I have nothing else.

RECROSS EXAMINATION

BY MR. GOLDBERG:

Q Your understanding is that if you lie you can be prosecuted for a host of crimes listed in that agreement?

A In addition to perjury, yes, sir.

Q In addition to perjury and the government wont use its best efforts, you understand, to get you help from other agencies?

A Mr. Goldberg --

Q If you don't understand my question --

MR. KAFTALIS: May all the instructions to the witness come from your Honor and not counsel?

MR. GOLDBERG: May the witness be instructed if he can't answer yes or no --

THE COURT: Answer the questions yes or no. If you can't say you are incapable of answering with a yes or no.

Q This past summer you testified for the government, did you not?

A Yes, sir.

Q In a loud voice please.

A Yes, sir.

Q The name of the case was United States v. Capps?

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MR. NAFTALIS: May we approach the bench?

THE COURT: Yes.

(At the side bar.)

MR. NAFTALIS: I would like to have some idea where he is going. In the Capps case the defendants happened to have been acquitted. I have a distinct fear that is what Mr. Goldberg is attempting to elicit.

MR. GOLDBERG: My offer of proof is --

MR. NAFTALIS: Keep your voice down please.

MR. GOLDBERG: I offered to prove that he testified against three defendants in connection with a stolen bond case and told of their involvement in the stolen bond case and they were acquitted.

THE COURT: What does that have to do with anything?

MR. GOLDBERG: The jury found that his version of their complicity was not true.

THE COURT: I have heard enough. Sustained.

(In open court.)

Q You told Mr. Naftalis that since the signing of this agreement you haven't committed any more crimes, is that right?

A Yes, sir.

Q The fact is you have been in custody?

A Yes, sir.

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Q Have you been prosecuted for these other crimes?

A No, sir.

Q Do you have an understanding with the government that you will not be prosecuted for these other crimes?

A I was told by the government that--

MR. GOLDBERG: I move to strike what the government told him.

THE COURT: Do you have an understanding with the government?

THE WITNESS: Yes, sir.

THE COURT: What is that understanding?

THE WITNESS: I was told by the government that if I told the truth--

MR. GOLDBERG: I move to strike.

THE COURT: Denied. Go ahead.

THE WITNESS: I was told by the government that if I were to tell the truth at any time that they requested my appearance in a courtroom that I would not be indicted on those cases that were pending.

Q Were you told that if you committed any further crimes that agreement was null and void?

A That was understood,yes, sir.

Q And you are aware, are you not, that your agreement is null and void if you commit perjury?

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A Definitely. They made that--

MR. GOLDBERG: I object. I wish to make a motion and I will state the grounds wherever you wish.

THE COURT: First of all, your objection is sustained.

Secondly, your motion is denied.

Go ahead.

I understand what your motion is. You can make a record on it later. I don't see any point in interrupting the trial at this point.

Denied. Go ahead.

Q Mr. Kelsey, when did you graduate from college?

A 1957.

Q What occupation did you then have?

A I went into L. Bamberger's training program and I was put into the shoe department.

Q What is your present occupation?

A Women's shoes.

Q Have you ever been in any other occupation other than the shoe business?

A Yes, sir.

Q What was that?

A I was a stock broker in 1969 for about a year and a half, two years.

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hph 1 * * * * *

T4 (In open court. Jury not present.)

MR. GOLDBERG: Your Honor, I don't want to interrupt your recess --

THE COURT: It has never troubledme before.

MR. GOLDBERG: I just want to make that motion and I would ask for --

THE COURT: I have denied it.

MR. GOLDBERG: I just wanted to state the grounds for the record. I think when the government is permitted to say or elicit from a witness that he has a deal, provided he tells the truth and doesn't perjure himself, by the placement of that witness on the stand, the government in effect improperly intrudes its own credibility, and prestige behind the witness. It tends to suggest an earlier determination by the government that he is testifying truthfully, and I might say, with all due respect, while of course I know the court is not bound by Judge Edelstein, in United States v. Dioguardi, the same argument was adopted by Judge Edelstein, and it intrudes into the case an element of the government's prior determination that this man is being truthful.

THE COURT: I don't think that. When somebody asks what the deal is, then I think the deal ought to be entirely spread upon the record. Now, it may well be that

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if you want to submit some request for charge that deals with this, I will consider it. But I can't see how a fellow can say what the deal is by pruning, cutting, leaving in and taking out. That's the deal. It has good things, it has bad things, and it has mediocre things for him, and I think the jury is entitled to know what the deal is, otherwise the impression would be for his testifying against Mr. Tramunti, he is getting the Congressional Medal of Honor, when in fact that is not the deal, as he testifies, and I don't know what the deal is, all I know is what the witnesses say, but the deal, so-called is, he will tell the truth about every matter about which he knows and I don't think when the government asks him that they are saying in substance, look, we put him on the stand pursuant to this deal and thereby we indicate to you the jury that we b2 think he is telling the truth. I don't see that. I would ask, however, that the United States Attorney be very circumspect in the way he handles this in the summation, and I would also call to the United States Attorney's attention a recent case of the Court of Appeals which had to do with prosecutors' summations, not because of what was contained alone in that case, but because it lists six instances where the Court of Appeals of this circuit has been critical in a relatively very short period of time about over-enthusiastic

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time he lied. Sustained.

(In open court.)

BY MR. RAKOFF:

Q Mr. Kelsey, you were asked about waiters approaching you with food at the Gatsby's luncheon, and I believe you testified that waiters did bring food. Was that throughout the luncheon?

A No, sir. They were told to serve the food and not come back until they were asked to.

Q You also testified that there was no one at the immediate surrounding tables but that there were people elsewhere within the same room?

A That's correct, sir.

Q Was there a conversation at the table with respect to that?

A Not that I recall, sir, no.

Q Did you have a conversation with your wife after the meeting with respect to that?

A That evening when I returned home, yes,sir.

Q What did you say --

MR. GOLDBERG: I object.

A I told my wife that --

THE COURT: Sustained.

Q When you testified falsely before the grand jury

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was that before or after you had agreed to cooperate with the Government?

THE COURT: Just one minute. Excuse me.

(Pause.)

A That was before, sir.

Q That was before you agreed to cooperate with the Government?

A Yes, sir.

Q And since then, since you agreed to cooperate with the Government, having testified -- have you testified in several trials?

A Yes.

Q How many in all?

A I believe three times.

Q Including this trial?

A No, this I think was the fourth.

Q Have you told any lies --

MR. GOLDBERG: I object to that.

THE COURT: Sustained.

Disregard the question.

Anything else?

MR. RAKOFF: No, sir.

THE COURT: Do you have anything further?

MR. GOLDBERG: I have nothing further.

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THE COURT: Ladies and gentlemen of the jury. I am going to let you go now until Tuesday at 10 a.m.

Monday, as I had to explain to my wife today, is now Veterans Day, and so the Court will be closed on Monday. I will excuse you until 10 o'clock on Tuesday.

Let me see counsel at the side bar for just one moment.

(At the side bar.)

THE COURT: Mr. Goldberg, I am prepared to order them not to buy an evening newspaper tonight, if you want me to do that. On the other hand, if you feel -- do you want that or don't you? Otherwise I will give them the usual admonition.

MR. GOLDBERG: I wouldn't suggest that.

Can I say something, and I will make it brief:

When I said "intimidating," which is a horrible word, I meant if they read something, I don't want them to fear if they make an honest disclosure to the court they will go to jail. I didn't mean it suggesting a lack of fairness.

THE COURT: I know that.

(In open court.)

THE COURT: Ladies and gentlemen of the jury, again I am going to repeat to you that you are not to

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discuss this case among yourselves or with anyone else, you are not to read anything about it in the newspapers. If you see any reference to it in the newspaper, you are to ignore it, you are not to read any article that may or may not be there. So far as radio and television is concerned, I have no knowledge as to what they do or what they don't do, but should any reference be made to this case, you are to shut that off immediately, without listening any further.

Now, please take those instructions to heart and have a very pleasant weekend and I will see you Tuesday at 10 o'clock.

(Jury leaves courtroom.)

THE COURT: I take it that both sides are finished with this witness?

MR. NAFTALIS: Yes, sir.

MR. GOLDBERG: Yes, sir.

THE COURT: I have for your consideration over the weekend a draft of the charge I propose to deliver. I will give one to each side.

MR. GOLDBERG: Your Honor, to get before this jury the fact that he testified in three other trials and that he told the truth, knowing there have been acquittals, so that technically --

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THE COURT: I am at a loss to understand what was going through your mind. After all the discussions we had, I am truly at a loss to understand what was going through your mind when you asked that question. I don't understand it, I will never understand it. I have sustained the objection to it and I don't see how anybody could have thought that Mr. Tramunti was a defendant in three different cases or in any cases, for that matter, and so I respectfully differ with your point. I just cannot restrain myself from saying that there are times in the life of a lawyer when there is no need for redirect examination and when things come up that have been the object of repeated conversation, repeated reflection of the Court's views and why you simply plunge into that which you must have known I did not want you to do, I will never know.

10 o'clock Tuesday morning. Call the next case.

(Adjourned to Tuesday, October 23, 1973, at 10.00 o'clock a.m.)

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